

## EARNEST MONEY AGREEMENT

**DATE:** FEBRUARY 26, 2002

**SELLER:** MULTNOMAH COUNTY, OREGON by and through its Tax Title Division, 501 S.E. Hawthorne Blvd., Rm. 175, Portland, Oregon, 97214, ("County").

**BUYER:** Name: BEN MACKINNESS  
Address: 1915 NE EVERETT ST.  
PORTLAND, OR, 97232  
Telephone: 503-702-9000

### Recitals

1. On February 26, 2002, County conducted a public auction consistent with ORS 275.110 to 275.250 of tax-foreclosed real properties, including the property described herein.
2. This Agreement is subject to the right of Multnomah County to reject any and all bids which is hereby expressly reserved by the County.
3. Buyer was the highest bidder at the auction for the property commonly known as **4834 NE 23<sup>rd</sup> Avenue**, Portland, Multnomah County, Oregon, more particularly described as follows:

Lot 6, Block 34, VERNON, City of Portland, Multnomah County, Oregon (the "Property").

### Agreement

Now, therefore, for valuable consideration, the parties agree as follows:

1. **Sale and Purchase.** Buyer agrees to purchase the Property from County and County agrees to sell the Property to Buyer for the sum of \$ 142,000 (the "Purchase Price").

2. **Earnest Money.** County hereby acknowledges receipt of the sum of \$ 24,000 paid by Buyer as earnest money. The earnest money shall be applied to the Purchase Price on the Closing Date, as that term is defined herein.

3. **Payment of Purchase Price.** The Purchase Price shall be paid as follows:

At closing, the earnest money shall be credited to the purchase price and the Buyer shall pay the balance of the purchase price in cash.

4. **Closing.** Closing shall take place on or before May 27, 2002, (the "Closing Date"), at the offices of Multnomah County Tax Title, 501 SE Hawthorne, Rm. 175, Portland, Oregon, 97214.

5. **Lead Based Paint Inspection.** Buyer shall have an opportunity to conduct a risk-assessment or inspection to determine the presence of lead-based paint or lead-based paint hazards on the property. Buyer may terminate this sale by delivering to County written notice of Buyer's disapproval of risk-assessment or inspection within ten (10) days of the date of this Agreement unless Buyer has waived the opportunity. The disclosure statement on lead-based paint and lead-based paint hazards, which is attached as Exhibit A, is incorporated in this Agreement. If Buyer delivers to County a timely notice of disapproval, this Agreement terminates and will be cancelled and County will promptly refund Buyer's earnest money deposit. Buyer shall

indemnify, hold harmless and defend County from all liens, costs, claims, demands, suits and expenses including reasonable attorney fees and expert fees, arising from or relating to Buyer's entry on or inspection of the property as provided under this paragraph. This covenant to indemnify, hold harmless and defend seller shall survive closing or any termination of this agreement.

**6. Right of Entry.** If the conditions described in Paragraph 5 above are satisfied or waived by Buyer, Buyer or its agents may prior to closing enter the Property to inspect the Property as needed. Coordination of the date and time the inspection(s) is requested needs to be made with the Tax Title Section at 503-988-3590.

Buyer shall indemnify, hold harmless and defend County from all liens, costs, claims, demands, suits and expenses including reasonable attorney fees and expert fees, arising from or relating to Buyer's entry on or inspection of (including any additional environmental inspection or testing) the property; or any other work performed or allowed by Buyer on the property prior to closing. This covenant to indemnify, hold harmless and defend seller shall survive closing or any termination of this agreement.

**7. Deed.** On the Closing Date, County shall execute and deliver to Buyer a statutory bargain and sale deed conveying the Property to Buyer.

**8. Title Insurance.** County does not provide title insurance.

**9. Possession.** Buyer shall be entitled to possession immediately upon closing.

**10. Property Sold "AS IS".** Buyer agrees that it has accepted and executed this Agreement on the basis of its own examination and personal knowledge of the Property; County makes no representations or warranties with respect to the physical condition or any other aspect of the Property, including, without limitation, that the Property may have conformed to past, current, or future applicable zoning or building code requirements, the existence of soil and stability, past soil repair, soil additions, or conditions of soil fill of susceptibility to land slides, the sufficiency of any under-shoring, the sufficiency of any drainage, whether the Property is located either wholly or partially in a flood plain or a flood hazard boundary or similar area, or any other matter affecting the stability or integrity of the Property. Buyer expressly acknowledges that the Property is being sold and accepted "AS IS", and Buyer hereby unconditionally and irrevocably waives any and all actual or potential rights Buyer may have regarding any form of warranty, except as set forth in this Agreement, express or implied, of any kind or type, relating to the Property. Such waiver is absolute, complete, total, and unlimited in any way.

**11. Binding Effect/Assignment Restricted.** This Agreement is binding on and will inure to the benefit of County, Buyer, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, Buyer will not assign its rights under this Agreement without County's prior written consent which consent shall not be unreasonably withheld.

**12. Remedies. TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT.**

(a) If the conditions described in Paragraph 5 above are satisfied or waived by Buyer and the transaction does not thereafter close, through no fault of County, before the close of business on the Closing Date, Buyer shall forfeit the [earnest money deposit/10% of the deposit] to County as liquidated damages.

(b) If County fails to deliver the deed described in Paragraph 7 above on the Closing Date or otherwise fails to consummate this transaction, the earnest money deposit shall be refunded to Buyer.

(c) The parties agree the remedies for the failure to close this transaction, shall be limited to the remedies set forth above and the parties waive any further remedies, which may be available to either. If this transaction does not close, the County shall pursue cancellation of this Agreement under ORS 275.220.

(d) Provided, nothing herein shall be interpreted to limit the Buyer's obligations under Paragraphs 5 and 6 as applicable, to defend, hold harmless and indemnify the County.

13. **Notices.** All notices and communications in connection with this Agreement shall be given in writing and shall be transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted shall be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

14. **Severability:** If any term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to person or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

16. **Applicable Law.** This Agreement shall be construed, applied, and enforced in accordance with the laws of the state of Oregon.

17. **Statutory Warning.**

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

(BU) 18. BUYER IS A LIC. REAL ESTATE AGENT IN THE STATE  
OF OREGON AND INTENDS TO OCCUPY AS A PRINCIPAL RESIDENCE  
TERM ID# 200006055 ~~exp 2/28/02~~ (BU)

BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

\_\_\_\_\_  
Diane M. Linn, Chair

REVIEWED:

THOMAS SPONSER, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By Matthew O. Ryan  
Matthew O. Ryan, Assistant County Attorney

BUYER

/s/ [Signature] 2/26/02

EXHIBIT A

**Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards**

**Lead Warning Statement**

Every buyer of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**County's Disclosure (initial)**

- SO (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):  
\_\_\_\_ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain): \_\_\_\_\_  
X County has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- SO (b) Records and reports available to the County (check one below):  
\_\_\_\_ County has provided the Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).  
X County has no reports or records pertaining to lead-based paint in the housing.

**Buyer's Acknowledgment (initial)**

- (M) X (c) Buyer has received copies of all information listed above.  
(A) X (d) Buyer has received the pamphlet *Protect Your Family from Lead in Your Home*.  
(e) Buyer has (check one below):  
\_\_\_\_ Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or  
(RU) X Waived the opportunity to conduct a risk management or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Certification of Accuracy**

The following party has reviewed the information above and certifies, to the best of the County's institutional knowledge, that the information provided by the signatory is true and accurate.

For the County

Gary Thomas

Title: For. Prop. Coordinator

Date: 12/12