

Upon recording return to	
Jonathan V Barg	Recorded in MULTNOMAH COUNTY, OREGON
Barg Norvat PC	C Swick, Deputy Clerk
121 SW Morrison Street	ATKLM
Suite 600	A49 4
Portland Oregon 97204	Total 36 00
	2006-032278 02/22/2006 02 08:43pm
Plu Bill Jackson 222-06	

### TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is made and entered into as of February 22, 2006 (the "Effective Date") by and between ALAN CRYMES and LYNN CRYMES, husband and wife, as GRANTOR ("Crymes") and MISSISSIPPI AVENUE LOFTS, LLC, an Oregon limited liability company as GRANTEE ("MAL").

#### RECITALS

A Crymes is the owner of certain real property located in the City of Portland, County of Multnomah, Oregon described as Lot 4, Block 12, MULTNOMAH ADDITION in the City of Portland, County of Multnomah, and State of Oregon (the "Crymes Property").

B MAL is the owner of certain real property located adjacent to the Crymes Property legally described as Lots 6, 8 and 10, Block 12, MULTNOMAH ADDITION, in the City of Portland County of Multnomah, State of Oregon and commonly known as 4138 N Mississippi Avenue, Portland Oregon 97217 (the "MAL Property").

C MAL intends to improve the MAL Property with a mixed-use condominium project (the "Project")

D MAL wishes to enter into this Agreement in order to be able to enter onto the Crymes Property, to stage and store construction materials, park construction vehicles locate a trailer to serve as a construction office or sales office, and for other customary construction easement uses in connection with construction of the Project (the "Permitted Uses")

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in consideration of the above recitals, the parties hereby agree as follows

## **AGREEMENT**

### **1. Temporary Construction Easement**

Crymes hereby grants to MAL, its successors agents, contractors, and invitees (the 'MAL Parties '), a temporary construction easement (the ' Easement ') over the Crymes Property for the Permitted Uses and upon the terms and conditions set forth below

### **2. Term**

The term of this Easement (the 'Term") shall commence on the Effective Date and terminate immediately upon the restoration of the Crymes Property to a condition as good as existed immediately prior to construction, on or before June 30, 2007

### **3. Use**

During the term of the Easement the MAL Parties may only use the Crymes Property for the Permitted Uses Crymes agrees that in light of the nature of the work that will be occurring on the Crymes Property during the Term, MAL may exclude from the Crymes Property all persons, including Crymes and their respective agents, guests, and invitees, and may use temporary barriers warning signs and other appropriate means to prohibit access to the Crymes Property During said period of Permitted Uses Mal , it's agents, contractors members and assigns, agree to conduct all activities on the Crymes property in accordance with all applicable laws and ordinances

### **4. Restoration of the Crymes Property**

MAL shall restore the Crymes Property to a smoothly graded condition, free of trash and debris (the "Pre-Construction Condition") If MAL fails to complete the restoration of the Crymes Property to its Pre-Construction Condition by the end of the Term, then Crymes may cause the completion of the restoration and obtain reimbursement from MAL its members agents successors or assigns for all reasonable expenses associated therewith Crymes shall include with any bill for expenditures made under this provision reasonable evidence of the amount and necessity of the expenditure MAL shall reimburse Crymes the amount due within thirty (30) days after receipt of a bill Should MAL fail to pay amounts owing to Crymes then Crymes shall have those rights set forth in ORS 105.180

### **5. Indemnity**

MAL, its members, successors and assigns, hereby agree to indemnify, defend, with counsel reasonably acceptable to Crymes, and hold Crymes harmless from any claim, damage, loss liability lien, cost (including reasonable attorneys fees) or expense arising out of the MAL Parties use of the Easement and the MAL Parties' entry on the Crymes Property in connection therewith including, without limitation any matter arising out of the construction activities conducted by the MAL Parties on the Crymes Property

**6. Insurance**

During the Term, MAL shall maintain or cause any of the MAL Parties performing work in the Crymes Property to maintain commercial general liability insurance for claims against bodily injury, personal injury death and property damage arising out of the MAL Parties' use of the Crymes Property in an amount not less than \$2,000,000 combined single limit. MAL shall provide to Crymes prior to commencement of any work by the MAL Parties on the Crymes Property a certificate of insurance naming Crymes and its designees, successors and assigns as additional insureds under said policy and indicating that said policy cannot be cancelled or materially modified without prior written notice to Crymes.

**7. Notice**

Any notice, payment, reimbursement request or demand required or desired hereunder (a "Document") shall be in writing given by personal delivery, confirmed facsimile transmission or first class mail, postage prepaid and sent certified mail return receipt requested, in each case addressed as respectively set forth below. The date of delivery of a Document shall be the date of personal delivery, the date on which successful facsimile transmission is confirmed, or the date of receipt or rejection as set forth on the return receipt of a letter containing the Document.

**To Grantee:**

Mississippi Avenue Lofts LLC  
Attn: R. Peter Wilcox  
2243 NE 20<sup>th</sup> Avenue  
Portland, OR 97212

**To Grantor:**

Alan and Lynn Crymes  
3231 NE US Grant Place  
Portland, OR 97212

**8. Runs with the Land.**

This Easement is intended to and shall run with the land on both the MAL Property and the Crymes Property, shall be binding upon MAL's and Crymes's successors and assigns, and shall be transferred by operation of law to any subsequent purchaser of either property.

**9. Attorneys' Fees**

In any action or proceeding arising out of this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, whether incurred by such party in enforcing its rights hereunder. In the event of a legal dispute, the laws of the State of Oregon shall apply.

IN WITNESS WHEREOF, this Easement has been duly executed as of the date first set forth above.

GRANTOR.

[Signature]  
ALAN CRYMES

[Signature]  
LYNN CRYMES

GRANTEE

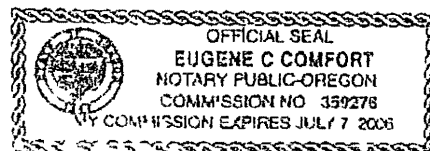
MISSISSIPPI AVENUE LOFTS, LLC  
an Oregon limited liability company

By [Signature]  
R Peter Wilcox  
Its Manager

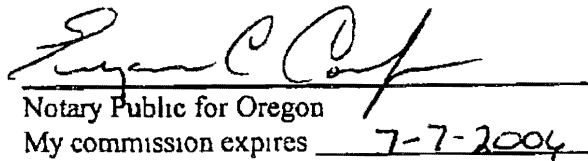
STATE OF OREGON                    )  
  )ss  
County of Multnomah            )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of February, 2006  
by ALAN CRYMES

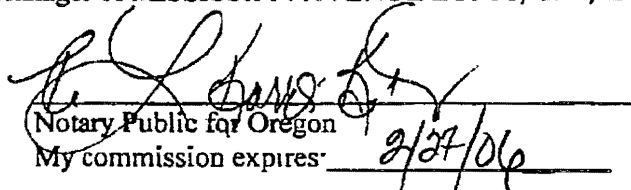
[Signature]  
Notary Public for Oregon  
My commission expires 7-7-2006



The foregoing instrument was acknowledged before me this 21 day of February, 2006 by LYNN CRYMES.



The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of February, 2006 by R. Peter Wilcox in his capacity as Manager of MISSISSIPPI AVENUE LOFTS, LLC, an Oregon limited liability company



MULTNOMAH  
RECORDING SECTION  
501 SE HAWTHORNE #158  
PORTLAND OR 97214  
(503) 988 3034

Receipt # 205299  
02/22/2006

2006032278 02/22/06 02 08pm

EASEMENT

PAGE FEE	20 00
SURVEY FEE	5 00
DEPT OF REVENUE	10 00
OR LAND INFO SYS	1 00
	-----
Total	\$36.00

=====  
Grand Total \$36.00

CASH	\$41.00
Change	\$5.00
Amount Due	\$0 00

Thank You. Retain this  
receipt for your records

C.17

Upon recording return to  Jonathan V. Barg Barg Horvat PC 121 SW Morrison Street Suite 600 Portland, Oregon 97204		
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### TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is made and entered into as of March 29, 2006 (the "Effective Date") by and between VICTORIA A. BURTON, as GRANTOR ("Burton"), and MISSISSIPPI AVENUE LOFTS, LLC, an Oregon limited liability company as GRANTEE ("MAL")

#### RECITALS:

A Burton is the owner of certain real property located in the City of Portland, County of Multnomah, Oregon described as Lot 12, Block 12, MULTNOMAH ADDITION, in the City of Portland, County of Multnomah, and State of Oregon and commonly known as 4121 N Mississippi Avenue, Portland, Oregon 97217 (the "Burton Property")

B MAL is the owner of certain real property located adjacent to the Burton Property legally described as Lots 6, 8 and 10, Block 12, MULTNOMAH ADDITION, in the City of Portland, County of Multnomah, State of Oregon and commonly known as 4138 N Mississippi Avenue, Portland, Oregon 97217 (the "MAL Property")

C MAL intends to improve the MAL Property with a mixed-use condominium project (the "Project")

D A Heritage English Elm tree located on the northwest perimeter of the Burton Property (the "Elm Tree") has a large limb on the north side of its trunk growing over the MAL Property which will require trimming before commencement of construction of the Project

E The north wall of the garage on the Burton Property (the "Burton Garage Wall") encroaches several inches onto the MAL Property

F MAL wishes to enter into this Agreement to acquire easement rights to enter the following portions of the Burton Property for the following purposes (collectively, the "Permitted Uses")

(i) MAL shall have the right to enter all portions of the Burton Property within three (3) feet of the north property line of the Burton Property to mitigate erosion, install construction anchors, and perform other construction tasks along the southern end of the MAL Property, (ii) for all other customary construction easement uses in connection with construction of the Project, (iii) to prune the Elm Tree in accordance with Section 4 of this Agreement, (iv) to remove the Burton Garage from the Burton Property under Section 5 of this Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in consideration of the above recitals, the parties hereby agree as follows

#### **AGREEMENT:**

**1 Temporary Construction Easement.** Burton hereby grants to MAL, its successors, agents, contractors, and invitees (the "MAL Parties"), a temporary construction easement (the "Easement") over the south three (3) feet of the Burton Property (except as provided in Sections 4 and 5 below) (the "Easement Area") for the Permitted Uses and upon the terms and conditions set forth below. The consideration for the rights granted in this Agreement is the sum of \$10,000 to be paid to Burton as follows. (i) the sum of \$5,000 upon mutual execution of this Agreement, (ii) the sum of \$3,000 upon execution of a deed from Burton to MAL for a strip of land 5 75 inches in width as described on **Exhibit B**, and (iii) the sum of \$2,000 upon MAL's completion of the use of the Burton Property as provided in this Agreement. The deed in (iii) shall be provided by MAL within sixty (60) days of mutual execution of this Agreement and signed by Burton within three (3) days thereafter.

**2 Term.** The term of this Easement (the "Term") shall commence on 270 the Effective Date and terminate upon the earlier of (i) ~~180~~ days following commencement of construction with respect to the Project, or (ii) March 31, 2007. Pruning of the Elm Tree shall not constitute commencement of construction.

(RW)



3/29/06



3 **Use.** During the Term of the Easement, the MAL Parties may only use the Burton Property for the Permitted Uses. Burton agrees that in light of the nature of the work that will be occurring on the Burton Property during the Term, MAL will have the right to exclude from the Easement Area all persons, including Burton and occupants of the Burton Property, and their respective agents, guests, and invitees. MAL shall have the right to erect in the Easement Area temporary barriers (including erecting a construction chain link fence at the rear of the Burton Property that shall remain until MAL's completion of the use of the Burton Property as provided in this Agreement), warning signs, and other appropriate means to prohibit access to the Easement Area. Prior to demolition of the Burton Garage as stated in Section 5, MAL shall cause its surveyor to mark the adjusted and new property line between the Burton Property and the MAL Property. MAL, its agents, contractors, members and assigns, agree to conduct all activities on the Burton Property in accordance with all applicable laws and ordinances.

4 **Pruning of the Elm Tree.** MAL shall have the right to remove the large limb of the Elm Tree described in Recital D and to prune the Elm Tree located on the northwest corner of the Burton Property in accordance with the proposal of Collier Arbor Care attached to this Agreement as **Exhibit A**. All such work shall be performed by Collier Arbor Care or another certified arborist. Prior to commencing the pruning or limb removal, MAL shall provide to Burton a one (1) to three (3) hour notice of commencement, such notice may be by email or telephone or in person. MAL's use of the Burton Property for purposes set forth in this Section 4 shall not be limited to the Easement Area and shall extend to all areas reasonably required to be used to accomplish such work.

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OBLIGATION  
PER OPT. 2  
RfW (ms)  
3/26

5 **Garage.** MAL shall have the right at any time during the Term to remove the Burton Garage. If there is a concrete slab floor in the Garage, MAL shall clean cut the slab. Burton and the occupants of the Burton Property shall not use the Burton Garage during the period of construction under this Section 5. MAL shall have the right to use all portions of the Burton Property reasonably necessary to accomplish the work contemplated in this Section 5. MAL shall not be responsible for rebuilding a new Garage on the Burton Property. Burton shall be solely responsible for the re-construction of a garage on the Burton Property after MAL completes the construction of its Project. Burton hereby relinquishes, releases, grants and conveys to MAL any interest of Burton in the portion of the MAL Property upon which the existing Burton Garage Wall is located. MAL shall deliver a deed to Burton evidencing the foregoing grant as provided in Section 1(ii), and Burton shall sign said deed as stipulated herein.

6 **Restoration of the Burton Property.** Following completion of its Project, MAL shall restore the Burton Property to a smoothly graded condition, free of trash and debris (the "Pre-Construction Condition"). In addition, MAL shall re-grade and re-seed any lawn areas, and repair or replace, if necessary, any existing fence, the existing deck, and the railroad ties which are currently located on the Burton Property. If MAL fails to complete the restoration of the Burton Property to its Pre-Construction Condition by the end of the Term,

then Burton may cause the completion of the restoration and obtain reimbursement from MAL and its members, agents, successors or assigns for all reasonable expenses associated therewith

7       **Indemnity.** MAL, its members, successors and assigns, hereby agree to indemnify, defend, with counsel reasonably acceptable to Burton, and hold Burton harmless from any claim, damage, loss, liability, lien, cost (including reasonable attorneys fees) or expense arising out of the MAL Parties' use of the Easement and the MAL Parties' entry on the Burton Property in connection therewith, including, without limitation, any matter arising out of the construction activities conducted by the MAL Parties on the Burton Property

8.       **Insurance.** During the Term, MAL shall maintain or cause any of the MAL Parties performing work in the Burton Property to maintain, commercial general liability insurance for claims against bodily injury, personal injury death and property damage arising out of the MAL Parties' use of the Burton Property in an amount not less than \$2,000,000 combined single limit MAL shall provide to Burton prior to commencement of any work by the MAL Parties on the Burton Property a certificate of insurance naming Burton and its designees, successors and assigns as additional insureds under said policy and indicating that said policy cannot be cancelled or materially modified without prior written notice to Burton

9.       **Notice.** Except as provided in Section 4, any notice, payment, reimbursement request or demand required or desired hereunder (a "Document") shall be in writing given by personal delivery, confirmed facsimile transmission or first class mail, postage prepaid and sent certified mail return receipt requested, in each case addressed as respectively set forth below The date of delivery of a Document shall be the date of personal delivery, the date on which successful facsimile transmission is confirmed, or the date of receipt or rejection as set forth on the return receipt of a letter containing the Document

**To Grantee:**  
Mississippi Avenue Lofts, LLC  
Attn. R. Peter Wilcox  
2243 NE 20<sup>th</sup> Avenue  
Portland, OR 97212

**To Grantor:**  
Victoria A. Burton  
PO Box 11813  
Portland 97211-0813

10.       **Runs with the Land.** During the Term, this Easement is intended to and shall run with the land on both the MAL Property and the Burton Property, shall be binding upon MAL's and Burton's successors and assigns, and shall be transferred by operation of law to any subsequent purchaser of either property This Agreement shall terminate upon expiration of the Term The parties agree to execute a termination agreement at the end of the Term

11       **Attorneys' Fees.** In any action or proceeding arising out of this Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable

attorneys' fees, whether incurred by such party in enforcing its rights hereunder. In the event of a legal dispute, the laws of the State of Oregon shall apply.

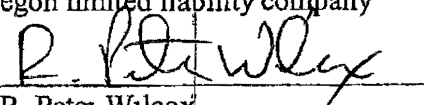
IN WITNESS WHEREOF, this Easement has been duly executed as of the date first set forth above.

GRANTOR:

  
VICTORIA A. BURTON

GRANTEE:

MISSISSIPPI AVENUE LOFTS, LLC,  
an Oregon limited liability company

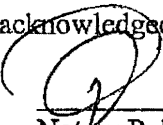
By   
R. Peter Wilcox  
Its Manager

STATE OF OREGON )

)ss

County of Multnomah )

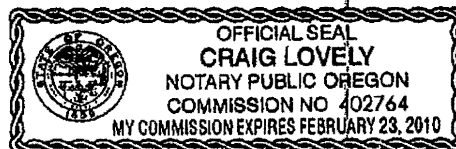
The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of March, 2006  
by VICTORIA A. BURTON

  
Notary Public for Oregon  
My commission expires \_\_\_\_\_

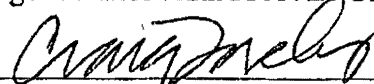
STATE OF OREGON )

)ss

County of Multnomah )



The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of March, 2006  
by R. Peter Wilcox in his capacity as Manager of MISSISSIPPI AVENUE LOFTS, LLC, an  
Oregon limited liability company

  
Notary Public for Oregon  
My commission expires 2/23/2010