

AFTER RECORDING RETURN TO:

City Recorder (Leilani Bronson-Crelly)  
P.O. Box 3040  
Oregon City, Oregon 97045-0304



\$46.00

00216400200100941500050054

11/09/2001 02:29:18 PM

D-E Cnt=1 Stn=9 DIANNAW  
\$25.00 \$11.00 \$10.00

Map: 2-2E-27BB

Tax Lot: 2500

Engineering File: E-EA01-01 (Barlow Crest No. 1, Lot 25 / TP96-03)

Building Permit: 01-313

Property Owner: Abney Revard, Inc.

## AGREEMENT CONCERNING CONSTRUCTION ON EASEMENT AREA

**WHEREAS**, Abney Revard, hereinafter called the OWNER, is the current owner of Lot No. 25 of Barlow Crest No.1 (known as 16145 Trail Drive, Oregon City, Oregon) hereinafter called the PROPERTY, and

**WHEREAS**, the OWNER of the PROPERTY or his predecessor in interest granted to the City of Oregon City, hereinafter called the CITY, a 44-foot wide Public Utility Easement, as shown in the site plan attached to and made part of this Agreement as Exhibit 'A', hereinafter called the "EASEMENT," and

**WHEREAS**, the City has installed certain public utilities, including stormwater and sanitary sewer utilities, in the EASEMENT and may, in the future, install additional utilities or repair or replace the existing utilities, or otherwise use the EASEMENT according to the terms of the EASEMENT; and

**WHEREAS**, the OWNER has begun to construct a single family residence on the PROPERTY, which the OWNER represents is an allowed use for the PROPERTY; and

**WHEREAS**, the single family residence now under construction on the PROPERTY encroaches into the EASEMENT to a significant degree; and

**WHEREAS**, the CITY is willing to allow the encroachment into the EASEMENT subject to the terms and conditions set forth in the Agreement.

**NOW THEREFORE**, The OWNER and the CITY agree as follows:

This agreement is to be recorded as a property interest and is binding on all future owners, assigns, heirs and successors of the PROPERTY.

OWNER acknowledges that the single family residence on the PROPERTY does encroach on the EASEMENT and accepts all responsibility for the encroachment and is willing to accept the conditions stated in the Agreement to avoid any further liability for the encroachment.

OWNER has examined soil studies indicating the condition of the soils in the EASEMENT and has satisfied himself that he is willing to accept the encroachment in full knowledge of the existing public utilities and the possibility of future repairs or replacement of those utilities and the installation of additional utilities, as allowed by the terms of the EASEMENT.

OWNER agrees that the CITY and its franchisees, assigns and successors, will not be liable for any damages to/of the single family residence (inclusive but not limited to foundation, structural fills,

supporting ground, overhangs, appurtenances, contents, etc.) due to any exercise of any rights under the EASEMENT (inclusive but not limited to any installation, operation, maintenance, up-grading, replacement, and access of any utilities within the EASEMENT). This includes liability for any condition or activity whether known or unknown, anticipated or unanticipated at the time of this Agreement.

OWNER agrees to hold the CITY harmless for any condition or activity noted above, specifically including any earth movement, flooding, or other damages from or through the exercise of the CITY's rights under the EASEMENT

In addition to holding the CITY harmless, the OWNER shall reimburse the CITY for any additional costs of exercising the rights under the EASEMENT because of this encroachment. After incurring any such costs, the City shall present a bill for such costs to the OWNER, who shall pay the costs within thirty days.

The OWNER shall reimburse the CITY for all costs incurred to provide this Agreement.

The OWNER may terminate this Agreement at any time by removing the encroachment and restoring the EASEMENT to the satisfaction of the CITY.

In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

IN WITNESS WHEREOF, the OWNER has executed this agreement this 8<sup>th</sup> day of August, 2001; if a corporate owner, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

**NOTICE: No stamp or corporate seal is allowed over any typed information.**

Individuals, general partnerships

\_\_\_\_\_  
Signer's Name

\_\_\_\_\_  
Signer's Name

\_\_\_\_\_  
(if executed by a corporation  
affix corporate seal below)

Corporation/limited partnership

\_\_\_\_\_  
Corporation/Partnership Name

\_\_\_\_\_  
Signer's Name, Title

\_\_\_\_\_  
Signer's Name, Title

\_\_\_\_\_  
Signer's Name, Title

*Ronald C. Abney*

*[Signature]*

RONALD C. ABNEY, PRESIDENT

FRANKLIN N. REVARD, EXEC. V.P., SEC.

**NOTICE TO NOTARIES: No notary stamp or corporate seal is allowed over any typed information.**

**Personal Acknowledgment**

STATE OF OREGON )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
before me, \_\_\_\_\_, the  
undersigned Notary Public, personally appeared \_\_\_\_\_ and  
acknowledged the foregoing instrument to be  
his/her voluntary act and deed.

**NOTARY PUBLIC FOR OREGON**

\_\_\_\_\_  
Notary's signature  
My Commission Expires: \_\_\_\_\_  
Stamp seal below

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(OWNER's Name and Address)

**City of Oregon City**  
**P.O. Box 3040**  
**320 Warner Milne Road**  
**Oregon City, OR 97045-0304**  
(CITY's Name and Address)

Accepted on behalf of the City of Oregon City.

  
City Manager

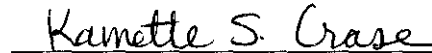
  
City Recorder

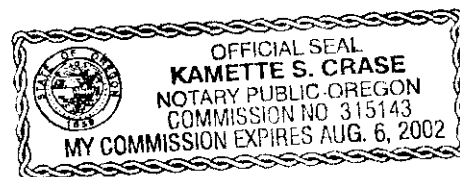
**Corporate Acknowledgment**

STATE OF OREGON )  
 ) ss.  
County of Clackamas )

On this 8<sup>th</sup> day of August, 2001,  
before me, Kamette S. Crase, the  
undersigned Notary Public, personally appeared  
Ronald C. Abney and  
Franklin N. Revard who  
being duly sworn, each for himself/herself and  
not one for the other did say that the former is the  
\_\_\_\_\_  
president  
and that the latter is the \_\_\_\_\_ secretary of  
Abney Revard Inc.  
\_\_\_\_\_, a  
corporation, and that the seal affixed to the  
foregoing instrument was signed and sealed in  
behalf of said corporation by authority of its  
board of directors; and each of them  
acknowledged said instrument to be its voluntary  
act and deed.

**NOTARY PUBLIC FOR OREGON**

  
Notary's signature  
My Commission Expires: August 6, 2002  
Stamp seal below



# Mortgage Loan Inspection

COUNTY OF CLACKAMAS STATE OF OREGON

LEGAL DESCRIPTION: LOT 25 BLK. ---

SUBDIVISION: BARLOW CREST - PHASE 1

CLIENT: ABNEY REYARD, INC.

L.N./JOB NO. ---

ATTN.: ---

DATE: JULY 11, 2001

SCALE: 1" = 30'

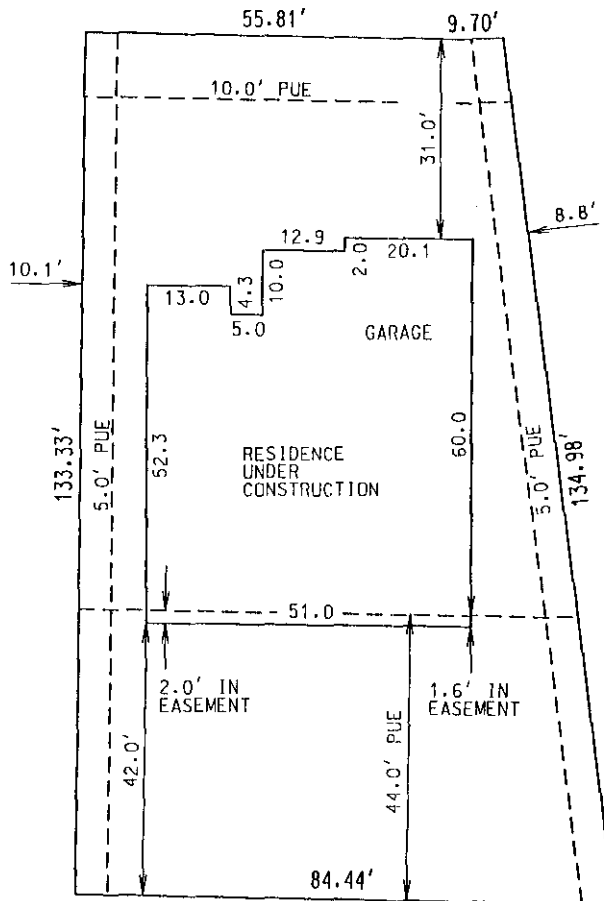


I HEREBY DECLARE THE STRUCTURAL IMPROVEMENTS TO THE ABOVE DESCRIBED PROPERTY TO BE SITUATE THEREON AS SHOWN. THERE ARE NO APPARENT ENCROACHMENTS BY OR AGAINST THE PROPERTY IN QUESTION, EXCEPT AS SHOWN. THIS LOCATION IS BASED UPON MONUMENTS FOUND. NO WARRANTY IS MADE AS TO THE CORRECTNESS OF SAID MONUMENTS AND NO LIABILITY IS ASSUMED IF SAID MONUMENTS ARE IN ERROR. THIS DECLARATION IS MADE AT THE REQUEST AND FOR THE EXCLUSIVE USE OF THE TRANSACTION AND CLIENT NAMED ABOVE, AND IS NOT TO BE USED FOR CONSTRUCTION PURPOSES, FUTURE TRANSACTIONS, LAND DIVISIONS OR BOUNDARY LOCATION.

20.20  
SURVEYOR



## TRAIL DRIVE 50.0' WIDE



LOT 25  
ABNEY REYARD, INC.  
16154 TRAIL DRIVE  
OREGON CITY

NOTE: BUILDING IN PUBLIC  
UTILITY EASEMENT,  
2.0' & 1.6'.

REVISED  
U-6788

4230 N.E. FREMONT STREET, PORTLAND OREGON 97213 (503) 284-5896 FILE NO

### EXHIBIT "A"

51

Encroachment

2-ZE-27BB TL 25'00

Abney Revard, Inc.

(Barlow Crest No. 1 Lot 25/  
TP96-03)

[Doc. 2001-094150]

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ITEM #1

Env#

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