

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2004-12815

2004 APR 13 P 4:19R

Glenn J. Vossling
REGISTER OF DEEDS

COUNTER LM C.E. AK
VERIFY AK D.E. LM
PROOF AK
FEES \$ 30.50
CHECK# 6258
CHG. _____ CASH _____
REFUND _____ CREDIT _____
SHORT _____ NCR _____

**BACKYARD DRAINAGE EASEMENT
WITH TWO ADDENDUMS FOR
LOT 79 IN MILLARD PARK SOUTH**

12815

2 of 12

Return to:
NP Dodge Land Development, Inc.
8701 W. Dodge Rd., Ste. 300
Omaha, NE 68114

A

EASEMENT

THIS INDENTURE made this 28th day of January, 2004 by Barr Homes, Inc., the undersigned owner or owners of Lot 79 in Millard Park South, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska (herein the "Grantor(s)") and Sanitary and Improvement District No. 216 of Sarpy County, Nebraska (herein the "Grantee"),

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other valuable consideration, the receipt of which is hereby acknowledged, Grantor(s) and Grantee agree as follows:

1. Grant of Easement. The Grantor(s) hereby grant a permanent easement on the rear ten (10) feet of Lot 79 in Millard Park South, to the Grantee and its successors and assigns (said Lot referred to herein as "Grantor(s)'s Lot"). Attached hereto as Exhibit "A" and incorporated herein by reference is a drawing which shows a proposed storm sewer line, with inlets, to provide surface water drainage for Lots 76 through 91, in Millard Park South, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska (said Lots in addition to Grantor(s)'s Lot referred to herein as the "Other Benefiting Lots"). The owners of the Other Benefiting Lots will be granting similar easements to the Grantee.

2. Purpose of Easement. The purpose of this Easement is to construct, operate, maintain, repair and/or replace storm sewers, drainage ways, drainage devices, and other types of surface water drainage on the Grantor(s)'s Lot described in this Easement and the surface water drainage on the Other Benefiting Lots.

3. Grantee To Install Certain Drainage Improvements. Subject to all of the conditions outlined herein, the Grantee agrees to cause its contractor to construct certain drainage improvements on the Easement granted herein and the easements on the Other Benefiting Lots, all in accordance with the plans and specifications prepared by the engineers of the Grantee.

4. Term of Easement. The term of this Easement shall be forever.

5. Prohibition Against Interference With The Easement. This Easement is being granted to allow for construction and maintenance of a storm sewer and drainage swale within the easement area as an accommodation to the Grantor(s) and the Other Benefiting Lot owners in an attempt to solve the surface water drainage problem on the Grantor(s) Lot and on the Other Benefiting Lots. If any type of building, structure, landscaping or any other obstacle is placed on the Easement, it may affect the surface water drainage on the Grantor(s)'s Lot and the Other Benefiting Lots. Therefore, the Grantor(s) hereby covenants with all the owners of the Other Benefiting Lots that upon completion of the drainage swale and storm drainage system the Grantor(s) will not do any grading nor place nor construct on the Easement granted herein any building, structure, landscaping, or any other type of obstacle which obstructs surface water drainage on the Easement granted herein. The Grantor(s) also covenants with all the owners of the Other Benefiting Lots that the Grantor(s), at the Grantor(s)'s sole expense, will keep the storm sewers, drainage ways, drainage devices, and other types of surface water drainage on the Easement on his ("his" to include "her", "their" or "its") Lot in good repair and condition. In the event that any lot owner of any of the Other Benefiting Lots has surface water drainage problems caused by the violation of the covenants in this Paragraph 5, said damaged Lot owner shall have a cause of action to force the Grantor(s), and his successors and assigns, to comply with the covenants in this Paragraph 5., and any such damaged lot owner, and his successors and assigns and any other contractor and/or agent of the damaged lot owner, shall have the authority to enter upon the Easement granted herein to correct such violation of the covenant.

6. Condition of Acquiring Easements. In the event the Grantee is unable to secure an easement in similar form as this Easement from one or more of the Other Benefiting Lot owners, the Grantee, in its sole and absolute discretion, can decline to install a storm sewer line on this Easement.

7. Circumstances Where This Easement Is Void. In the event no work is done on the Easement granted on the Lot described herein for the reason outlined in Paragraph 6, above within one (1) year of the date of full execution of this easement, the Easement granted herein shall be null and void. But if the work is done, this Easement shall be for the term outlined in Paragraph 4, above.

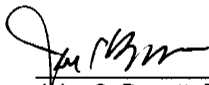
8. Grantor(s)'s Authority. The Grantor(s), for himself and his successors and assigns, do hereby covenant and agree with the Grantee, and its successors and assigns, that the Grantor(s) at the time of execution of this Easement has the good, right and lawful authority to grant this Easement, and that the Grantor(s), and his successors and assigns, further covenant to warrant and defend said Easement against the lawful claims of all persons whomsoever.

9. Binding Effect. This Easement, and all of its terms and conditions, shall be binding upon, and shall benefit the Grantor(s) and his successors and assigns, and the Grantee, and its successors and assigns.

Dated this 28th day of January, 2004.

GRANTOR(S):

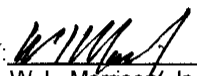
Barr Homes, Inc.



John C. Barrett, President

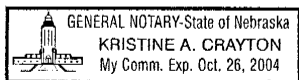
GRANTEE:

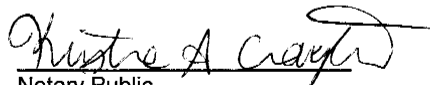
Sanitary and Improvement District NO. 216
of Sarpy County, Nebraska

BY: 
W. L. Morrison, Jr., Chairman

STATE OF NEBRASKA)
)ss
COUNTY OF Douglas)

On this 28th day of January, 2004, before me the undersigned, a Notary Public in the aforesaid County, personally came John C. Barrett, President of Barr Homes, Inc., Grantor(s), personally known to me to be the identical persons whose names are affixed to the foregoing instrument and who acknowledged their execution thereof to be their voluntary act and deed as such persons.





Notary Public

STATE OF NEBRASKA)
)ss
COUNTY OF Douglas)

On this 13th day of April, 2004 before me the undersigned, a Notary Public in the aforesaid County, personally came W. L. Morrison, Jr., Chairman of Sanitary and Improvement District No. 216 of Sarpy County, Nebraska, personally known to me to be the Chairman and identical whose name is affixed to the foregoing instrument and who acknowledged his execution thereof to be his voluntary act and deed as such District.




Notary Public

C

Addendum To Easement

THIS ADDENDUM shall be attached to an Easement to Sanitary and Improvement District No. 216 of Sarpy County, Nebraska (the "Grantee") on Lot 79 in Millard Park South, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, and shall become a part of said Easement.

1. Description of Grading. When the subdivision was originally graded, there was a grading plan which provided surface water drainage along the rear lot lines of this lot and the Other Benefiting Lots. In conjunction with the construction of the drainage improvements the grade on the rear five (5') feet of this lot and the Other Benefiting Lots will be re-established to the grade shown on the original grading plan. The remaining five feet of the easement on the Grantor's Lot will be graded as a transition to the existing grade of the balance of the Grantor's Lot.

2. Fences. The Grantee will remove any fence on the easement which will interfere with the required grading and the construction of the storm sewer system. After the grading and the construction of the storm sewer drainage system is completed, the Grantee will re-erect the fence at or near its original location but at the new elevation.

3. Re-Sodding. Following the completion of the grading and storm sewer construction, the Grantee will replace sod in the construction area when weather permits.

4. Trees and Shrubs. If it is necessary to remove any trees or shrubs, which are located in the easement area, the Grantee will remove the trees and shrubs and replant them in the same approximate location following the completion of construction and grading. Provided, however, the Grantee will not guarantee the survival of any replanted trees or shrubs.

5. Underground Watering Systems. Provided Grantor will provide information about the location of any underground water system, the Grantee will repair any damage done to the underground water system during grading and construction of the storm sewer drainage system.

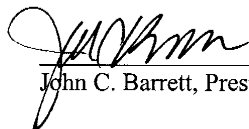
6. Sole Cost of Grantee. All of the work outlined in this Addendum will be done at the sole cost of the Grantee.

7. Practicable Exception. As outlined in the easement to which this Addendum is attached, the work described above and in the easement document is being done as an accommodation to the Grantor at the sole cost of the Grantee. Therefore, the provisions of this Addendum are subject to what is practical as determined by the Grantee.

Dated the same day as this Easement.

GRANTOR(S):


Barr Homes, Inc.



John C. Barrett, President

GRANTEE:

Sanitary and Improvement District No. 216 of
Sarpy County, Nebraska

By: 

W.L. Morrison, Jr., Chairman

D

SECOND ADDENDUM TO EASEMENT

THIS SECOND ADDENDUM shall be attached to an Easement to Sanitary and Improvement District No. 216 of Sarpy County, Nebraska (the "Grantee") on Lot 79 in Millard Park South, a subdivision as surveyed, platted, and recorded in Sarpy County, Nebraska, and shall become a part of said Easement.

1. Reason For Second Addendum. The Easement showed a proposed storm sewer line, with inlets, to provide surface water drainage for Lots 76 through 91, in Millard Park South. Said Lots 76 through 91, other than the Grantor(s)'s Lot, are referred to collectively in the Easement as the "Other Benefiting Lots." However, the owners of Lot 77 have refused to sign an Easement. Without an Easement from the owners of Lot 77, the Grantee cannot provide surface water drainage for Lots 76, 77, 90, and 91.

2. Amended Definition of "Other Benefiting Lots." The Grantee has obtained signed Easements from the owners of Lots 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89. The Easement is hereby amended to exclude Lots 76, 77, 90 and 91 as "Other Benefiting Lots."

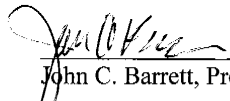
3. Grantee's Option. The Grantee shall have an option to select one or more of Lots 76, 77, 90, and 91 and attempt to provide surface water drainage for said selected Lot or Lots. If the Grantee exercises said option and the surface water drainage for the selected Lot or Lots passes through the Easements on Lots 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 89, said selected Lot or Lots shall be one of the "Other Benefiting Lots" with all of the rights and obligations of "Other Benefiting Lots" as outlined in the Easement.

4. Recording Of This Easement. This Easement, with the Attached Addendum and the Second Addendum, will be recorded in the Register of Deed's Office of Sarpy County, Nebraska. Paragraph 7 of the Easement shall continue to be applicable.

Dated the same day as this Easement.

GRANTOR(S):

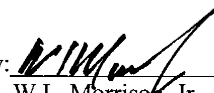
Barr Homes, Inc.



John C. Barrett, President

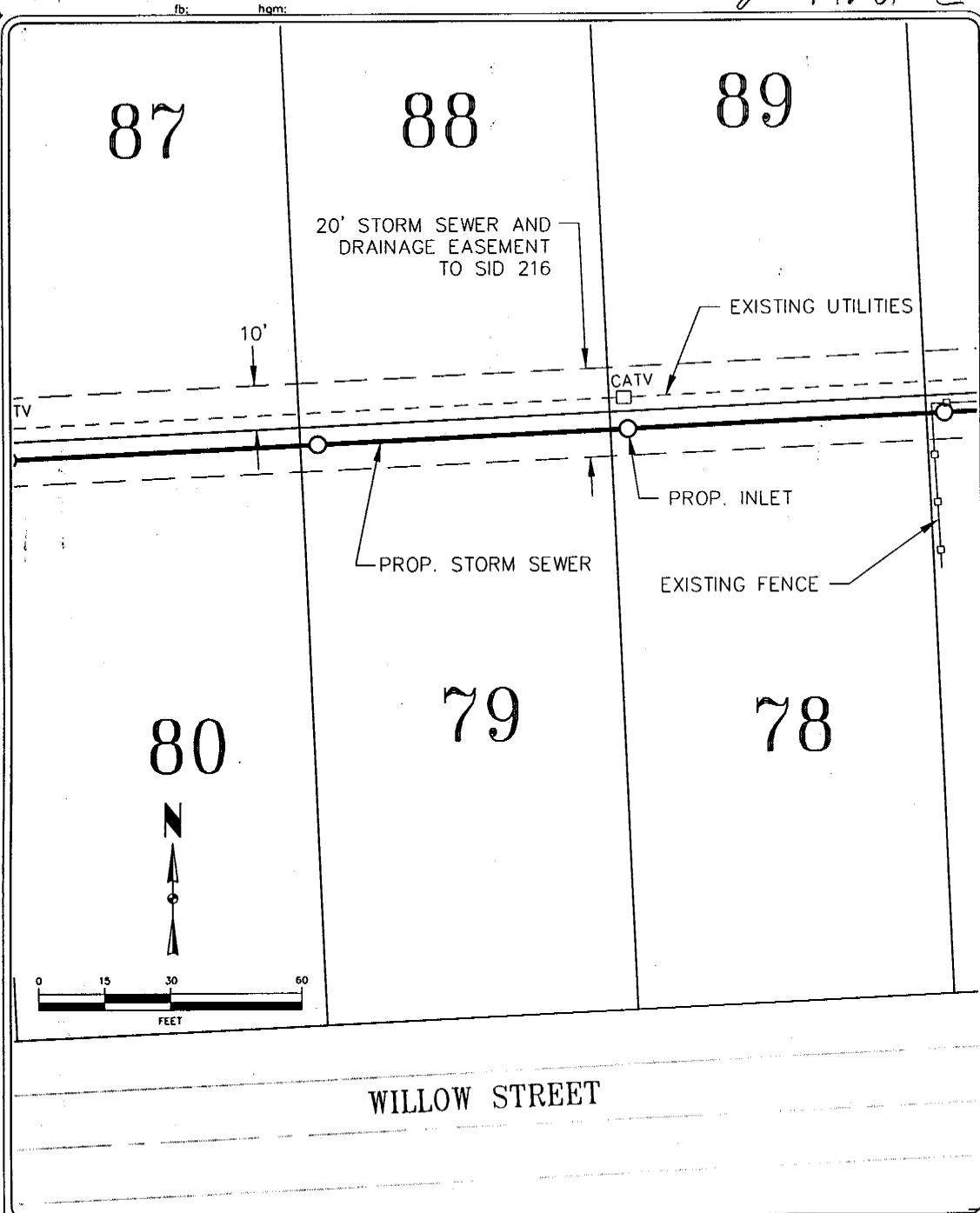
GRANTEE:

Sanitary and Improvement District No.
216 of Sarpy County, Nebraska

By: 

W.L. Morrison, Jr., Chairman

2004-12815E



project no. 71253
date DEC. 03
sheet 1 OF 1

project MILLARD PARK SOUTH
BACKYARD DRAINAGE
client SANITARY IMPROVEMENT DISTRICT 216
sheet EASEMENT - LOT 79

BAB
drawn
designed
approved

hgm
ASSOCIATES INC.
ENGINEERING ARCHITECTURE SURVEYING
council bluffs omaha