



Engineering Department

DATE: April 23, 2024

FROM: Gabe Schell, City Engineer

ITEM: Private Drive and Private Utility Agreement and Access Easement with Edgewood Properties, LLLP.

REQUEST:

Consider approval of a Private Drive and Private Utility Agreement and Access Easement with Edgewood Properties, LLLP.

BACKGROUND INFORMATION:

Edgewood Properties, LLLP is currently developing a 28-unit project to construct single family homes located in northeast Bismarck in Edgewood Village Seventh Addition First Replat. These properties will utilize a private drive, Oklahoma Lane, off Knudsen Avenue and Minnesota Drive for access and to bring utility services to each structure. See attached location map.

The Private Drive and Private Utility Agreement outlines the responsibilities of the property owners, along with an agreement of services the city will provide. The agreement also provides the City and other applicable government authorities rights to enter said property to perform duties designated in the agreement. As part of this development, a PUD was required, which included providing an access easement for the private drive. A copy of the private drive and private utility agreement and the access easement are attached.

RECOMMENDED CITY COMMISSION ACTION:

Approve a Private Drive and Private Utility Agreement and Access Easement with Edgewood Properties, LLLP.

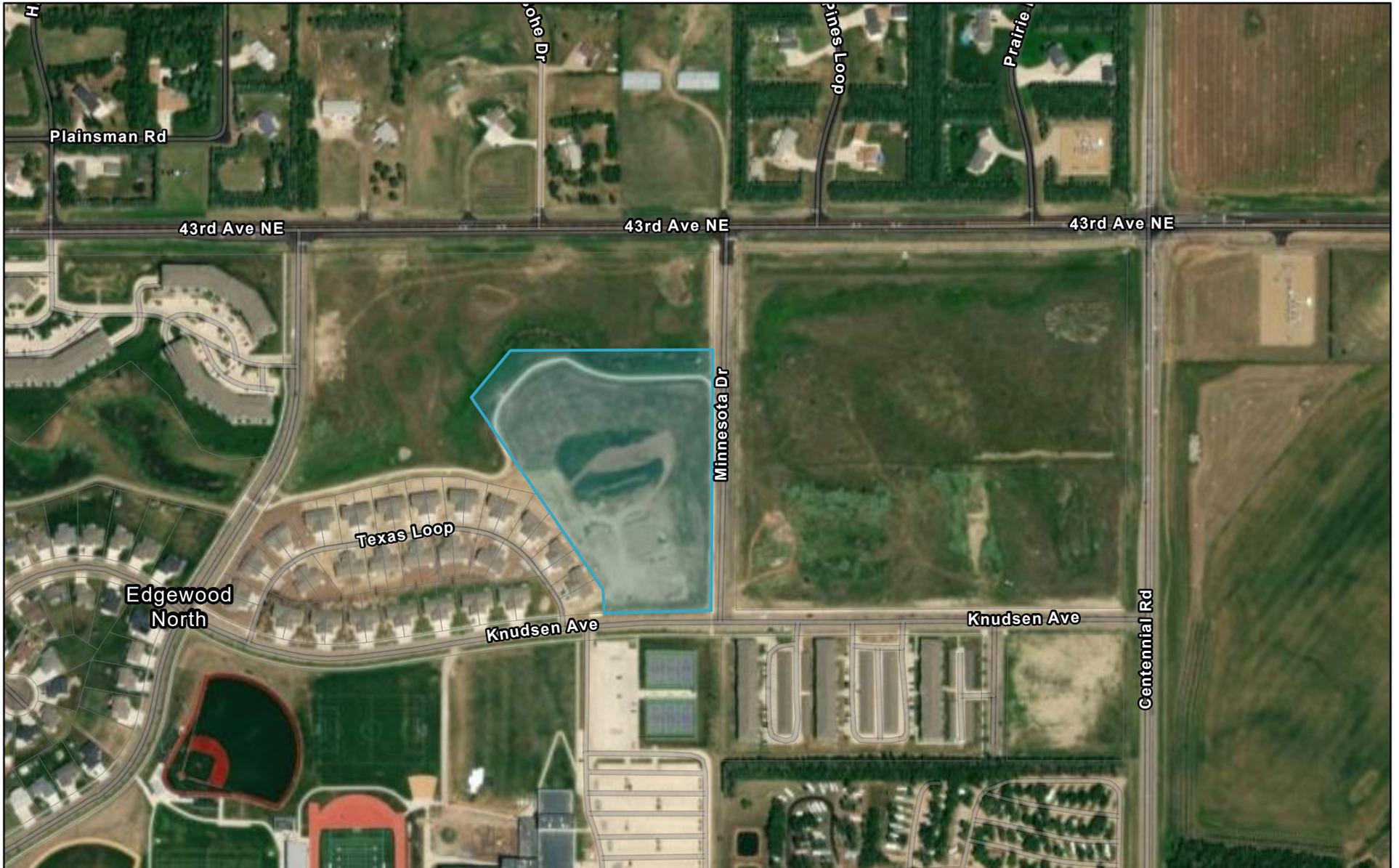
STAFF CONTACT INFORMATION:

Gabe Schell, City Engineer, 701-355-1507, gschell@bismarcknd.gov

ATTACHMENTS:

1. Location Map
2. Private drive and utility agreement
3. Access easement

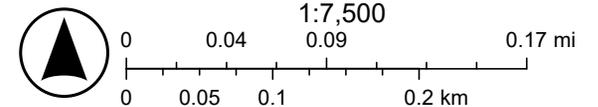
Edgewood Properties LLLP Development



4/16/2024

Location Map

Lot 52, Block 1 Edgewood Seventh
Addition First Replat



Maxar, Esri Community Maps Contributors, City of Bismarck, State of North Dakota, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph,

Above this line used for recordation purposes only.

PRIVATE DRIVE AND PRIVATE UTILITY AGREEMENT

The City of Bismarck (the "City") and Edgewood Properties LLLP (the "Owner") make this Development Agreement with regard to the development of the property located in Bismarck, North Dakota and with the property ("the Property") described as follows:

Lot 52, Block 1, Edgewood Village 7th Addition 1st Replat to the City of Bismarck, Burleigh County, North Dakota

The Owner desires to develop the Property for residential use and is requesting utilizing a private drive(s), road(s) or access easement(s) (the "Private Drive") to provide access and services to the parcels platted within the Property and identified above. The Property is located west side of Minnesota Drive and north of Knudsen Avenue.

The City agrees to the proposed use of a Private Drive provided the utilities listed below ("Private Utilities") which serve the individual parcels within the Property are also privately owned, except where the City has agreed in writing to own Utilities.

The Private Drive and Private Utilities will include but not be limited to the following:

Private Drive: The paved roadway or access from the City right-of-way, including all curb and gutter, pavement surface, subgrade and drain tile, driveway approaches and all signage including the private drive name and no parking fire lane signage if required by emergency services.

Water: The water main from the city main, all curb stops between the City main and individual properties being served, water hydrants and valves and all equipment needed to operate the private water system in accordance with state and local requirements.

Sanitary Sewer: The sewer main from the city sewer main, including the Y-connection at the city main, the Y-connections and manholes between the city main and individual

properties and all equipment needed to operate the private sanitary sewer system in accordance with state and local requirements.

Street Lighting: Streetlight poles, streetlight fixtures, electrical conduit and conductor, equipment needed to power and control the streetlights and all equipment needed to operate the private streetlighting system.

Storm Water Facilities: Storm sewer from the City storm system, inlets, manholes, detention ponds, water quality control systems, pump stations and all other equipment and facilities needed to operate the private storm sewer system in compliance with federal, state and local storm water requirements.

The construction, maintenance, operation and replacement of the Private Drive and Private Utilities located with the Property, or located outside the Property but serving exclusively the Property, are all entirely the responsibility of the Owner and its assigns, and the City shall have no responsibility with regard thereto, except that the City will maintain and repair utilities owned by the City.

The installation and use of the Private Drive and Private Utilities does not relieve the Owner from participating in the construction, maintenance, operation and replacement of City facilities as it relates to City funding methods and policies to fund City improvements.

A non-exclusive easement in favor of the City and any other applicable government authority or agency who has jurisdiction over the Property, is granted by this document upon and across the Property for purposes of performing such duties related to law enforcement, fire protection, life safety, health, sanitation and other matters as shall be required from time to time for the purpose of performing their authorized duties.

The Owner has the authority to grant an Easement to the City for purposes of servicing the Private Utilities within the Property and has the authority to expand such grant as deemed appropriate by the Owner.

The City, and the Owner, for good and valuable consideration hereby acknowledged, agree to the following terms and conditions:

1. The Owner agrees to submit a site plan for approval which demonstrates the location and dimension of the Private Drive in relation to the intended structures. The site plan will also show the location, size and material of the Private Utilities along with the required storm water submittals.

2. The Owner agrees to grant the City access over, across and on the Property to permit the City to accomplish the purpose as stated in this agreement.
3. The Owner agrees and understands that the City has no obligation to perform any maintenance or repair of any of the Private Utilities on the Property.
4. The City agrees to provide the following services:
 - Scheduled yearly fire hydrant flushing.
 - Technical assistance in the event a water main break or sewer failure should it occur.
 - Locating and providing curb stop shut-offs such that the Owner can service the Private Utilities
5. The City agrees to provide solid waste collection service consistent with the zoning and use of the Property during the normal course and operation of this service within the City. The Owner agrees to hold the City harmless from any and all damages that may occur during the waste collection process.
6. The City agrees to exercise reasonable care when performing the maintenance described herein. Further, the City agrees to perform all services in a workmanlike manner, and to schedule the maintenance by the City Public Works Department in a manner which will provide efficiency and economy consistent with timeliness.

The Owner agrees to hold the City harmless from any and all damages that may occur due to the process and actions taken during or following any of services provided herein, except for any damages arising from any negligent act by the City, its officers, employees, representatives, agents, or contractors. The Owner will release, defend, indemnify, protect, and hold harmless the City and City officers, agents, representatives, employees, and contractors from and against any and all claims of personal injury, property damage or any other actions, administrative proceedings, judgments, damages, penalties, fines, costs, liabilities, interests, or losses, including costs, expenses, and attorney's fees, arising out of the services provided under this agreement, except for any claims arising from any negligent act by the City, its officers, employees, representatives, agents, or contractors.

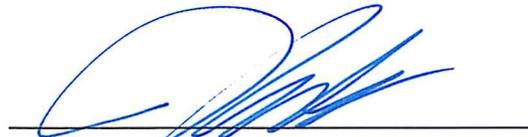
The Agreement will run with the land as to the parcels within the Property and shall be recorded with the Burleigh County Recorder. The terms of this agreement shall be considered a covenant running with the land and bind all future owners in the same manner as if they had personally entered the agreement.

7. This Agreement may not be modified, except in writing and signed by both parties.

8. This Agreement shall be controlled by the laws of the State of North Dakota, and any action brought as a result of any claim, demand or cause of action arising under the terms of this Agreement shall be brought in an appropriate venue in the State of North Dakota.

This Agreement shall bind the parties, their successors, assigns and heirs.

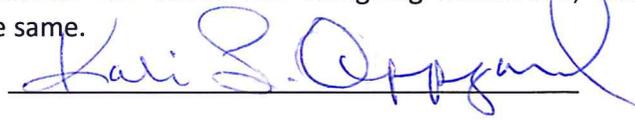
Dated this 3rd day of April, 2024



Edgewood Properties, LLLP
Jon Strinden
CEO/President

STATE OF NORTH DAKOTA)
) ss:
COUNTY OF Cass BURLEIGH)

On this 3rd day of April, 2024, before me personally appeared Jon E. Strinden, known to me to be the person who is described in and who executed the within and foregoing instrument, and acknowledged to me that s/he executed the same.



Notary Public
State of North Dakota



ACCESS EASEMENT

This Access easement is made this _____ day of _____, 2024, between **Edgewood Properties, LLLP** whose address is 51 Broadway N., Ste 600, Fargo, ND, 58102, Grantor and the Public, Grantee.

1. For and in consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor grants to Grantee, its successors and assigns, an exclusive easement to run with the land at all times hereafter to construct, operate, maintain, and repair curb, gutter, and paving facilities under or upon the real property hereinafter described below. Grantee shall have the right to ingress and egress across real property of Grantor for the purpose herein granted.
2. The real property for the Access easement herein dedicated, granted and reserved is owned by the Grantor and is described as follows:

ALL THAT PART OF LOT 52 BLOCK 1 EDGEWOOD SEVENTH ADDITION FIRST REPLAT, BISMARCK BURLEIGH COUNTY, NORTH DAKOTA, BEING 13' ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

BEGINNING AT A POINT ON THE EAST LINE OF SAID LOT 52 THAT IS SOUTH 00 DEGREES 37 MINUTES 38 SECONDS WEST, ALONG SAID EAST LINE, A DISTANCE OF 282.67 FEET FROM THE NORTHEAST CORNER OF SAID LOT 52; THENCE NORTH 89 DEGREES 33 MINUTES 03 SECONDS WEST, A DISTANCE OF 119.84 FEET; THENCE WESTERLY AND TO THE RIGHT, ON A 200.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 126.30 FEET; THENCE NORTHWESTERLY AND TO THE LEFT, ON A 114.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 333.81 FEET; THENCE SOUTH 41 DEGREES 08 MINUTES 19 SECONDS EAST, A DISTANCE OF 246.19 FEET; THENCE SOUTHERLY AND TO THE RIGHT, ON A 200.00 FOOT RADIUS CURVE, AN ARC LENGTH OF 139.35 FEET; THENCE SOUTH 01 DEGREE 13 MINUTES 03 SECONDS EAST, A DISTANCE OF 82.91 FEET TO THE SOUTH LINE OF SAID LOT 52.

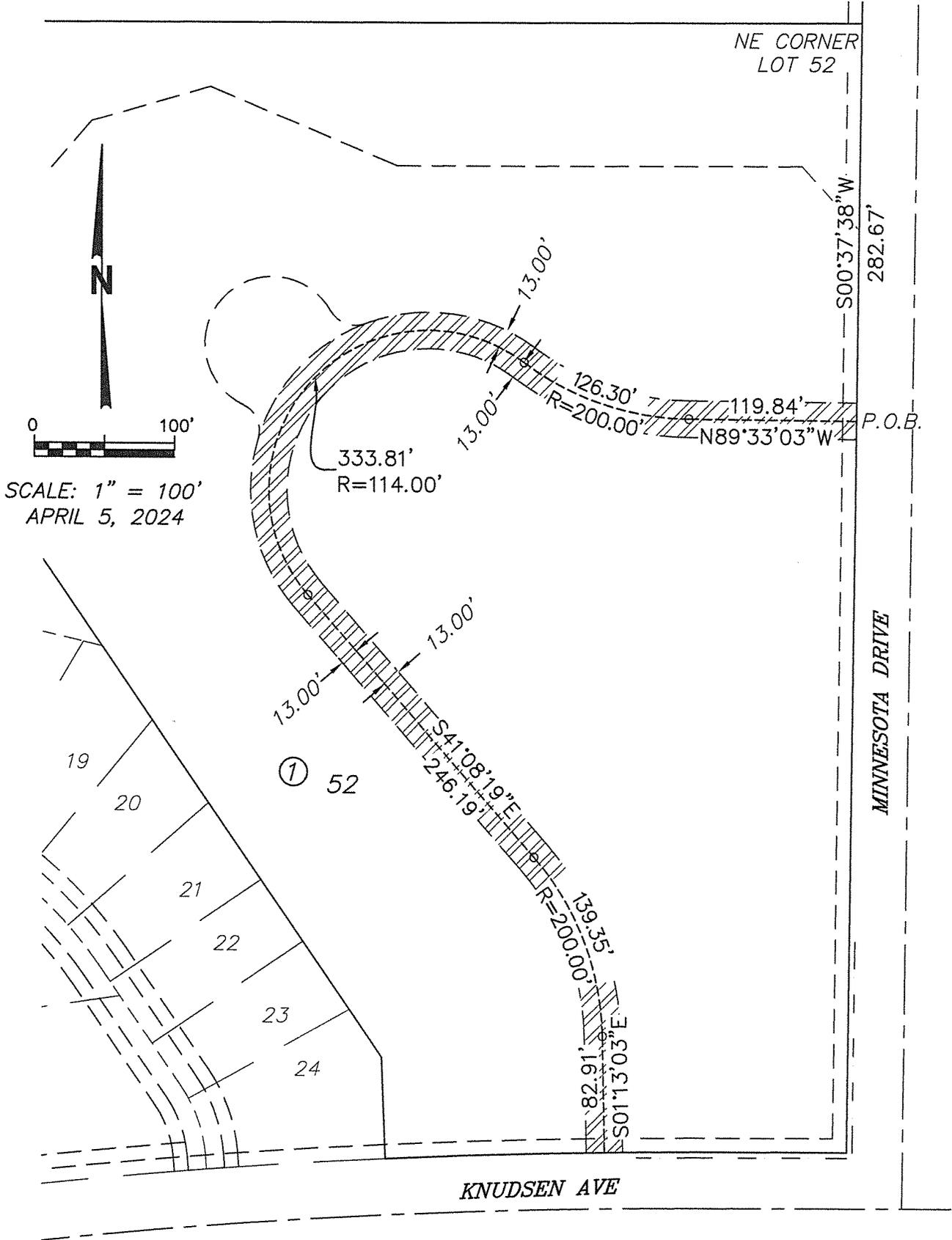
AND

ALL THAT PART OF LOT 52 BLOCK 1 EDGEWOOD SEVENTH ADDITION FIRST REPLAT, BISMARCK BURLEIGH COUNTY, NORTH DAKOTA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS SOUTH 00 DEGREES 37 MINUTES 38 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 52, A DISTANCE OF 260.60 FEET FROM THE NE CORNER OF SAID LOT 52; THENCE NORTH 89 DEGREES 22 MINUTES 22 SECONDS WEST, PERPENDICULAR TO SAID EAST LINE, A DISTANCE OF 389.60

ACCESS EASEMENT

PART OF LOT 52 BLOCK 1
 EDGEWOOD SEVENTH ADDITION FIRST REPLAT
 BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA



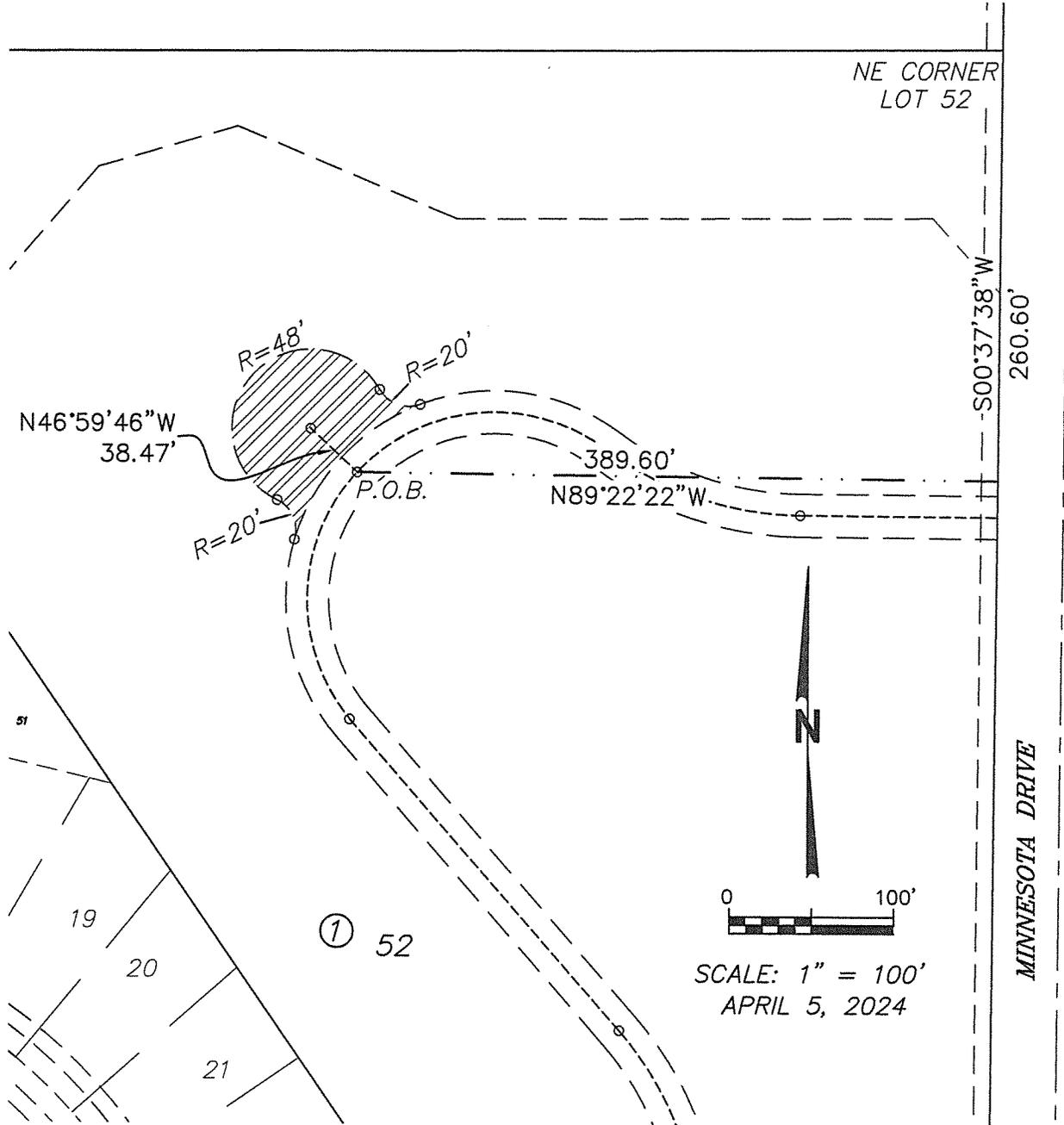
SWENSON, HAGEN & COMPANY P.C.

909 Basin Avenue
 Bismarck, North Dakota 58504
 sheng@swensonhagen.com
 Phone (701) 223-2600
 Fax (701) 223-2606

Surveying
 Hydrology
 Land Planning
 Civil Engineering
 Landscape & Site Design
 Construction Management

ACCESS EASEMENT

PART OF LOT 52 BLOCK 1
EDGEWOOD SEVENTH ADDITION FIRST REPLAT
BISMARCK, BURLEIGH COUNTY, NORTH DAKOTA



SWENSON, HAGEN & COMPANY P.C.

909 Basin Avenue
Bismarck, North Dakota 58504
sheng@swensonhagen.com
Phone (701) 223-2600
Fax (701) 223-2606

Surveying
Hydrology
Land Planning
Civil Engineering
Landscape & Site Design
Construction Management