



Title:	Authorization to Approve First Amendment to the Temporary Easement Agreement for SWLRT Construction
Resolution number:	22-062
Prepared by:	Michael Hayman, Project Planning Manager Phone: (952) 471-8226 mhayman@minnehahacreek.org
Recommended action:	The Board of Managers approves the first amendment to the temporary easement for Southwest Light-Rail Transit (SWLRT) construction at 325 Blake Road. The existing easement, executed in 2019, conveys an area of approximately 9,525 square-feet along the southern parcel boundary and expires in November 2022. The amendment extends the expiration date to December 1, 2024, and addresses the relationship with Alatus Development, LLC, as the likely successor to the easement. All other terms for use and access remain the same and no permanent structures will be placed on or under the easement area.
Schedule:	2019-2026: Heavy construction of SWLRT system Spring 2023: Anticipated sale of affected property to Alatus 2026-2027: Passenger service begins
Budget considerations:	Not applicable
Past Board action:	Res # 19-028 Conveyance of temporary easement for Southwest Light Rail Transit construction Res # 22-023 Approval of the 325 Blake Road Purchase and Sale Agreement

Summary:

The Minnehaha Creek Watershed District (MCWD) and Metropolitan Council (Met Council) have worked in partnership for years to implement numerous impactful community projects along the Minnehaha Creek Greenway and Blake Road Corridor, including projects like the Lake Street stormwater diversion project and the local Met Council sanitary lift station project.

As the Blake Road corridor continues to experience significant change over the next 20 years, a major catalyst for this transformation is the anticipated opening of the Southwest Light Rail Transit (SWLRT) Green Line Extension and construction of a station at Blake Road. Met Council initiated heavy construction of the light rail system in 2019 and has been working under a variety of easements to complete its construction activities.

One such easement is at the 325 Blake Road site, where in 2019, MCWD provided a temporary easement over approximately 9,525 square feet along the southern boundary of the parcel. The easement was provided for access and staging for the construction of a stormwater lift station and associated pipe infrastructure to convey stormwater from the grade separated Cedar Lake Regional Trail tunnel underneath Blake Road. The easement use is specific to the installation of the stormwater elements and the reconstruction of the Cedar Lake Regional Trail and does not allow for any structures to be placed on or under the granted area.

The first amendment to the temporary easement was drafted in consideration of two substantive elements. The first addresses the fact that MCWD has a signed purchase and sale agreement (PSA) with Alatus Development, LLC (Alatus), and that Alatus has an approved master development plan with the City of Hopkins. To address this, section one of the temporary easement acknowledges that the property may be developed, with certain improvements occurring within the temporary easement area, and sets forth mutually agreeable construction activities, and a coordination framework to ensure all parties are aware of construction activities.

The second element being modified by the first amendment is the termination date of the temporary easement. Section two of the agreement is modified to extend the expiration date to December 1, 2024, to accommodate final access and staging for the stormwater conveyance system.

Alatus, as the likely successor to the temporary easement agreement, has reviewed and approved the language and will consent to the new terms and extension, as a signatory to the first amendment. MCWD general counsel has also reviewed the first amendment and finds the terms of the amendment acceptable.

Staff is recommending the MCWD Board of Managers approve resolution 22-062 authorizing the District Administrator to execute the first amendment to the easement agreement for the 325 Blake Road parcel, with any non-substantive changes in consultation with legal counsel.

Attachments:

- First Amendment to Temporary Easement Agreement



RESOLUTION

Resolution number: 22-062

Title: Authorization to Approve First Amendment to the Temporary Easement Agreement for SWLRT Construction

WHEREAS MCWD owns the 325 Blake Road property, acquired in 2011 for the purposes of stream restoration, regional stormwater management, stream corridor improvements, public land expansion and redevelopment opportunities;

WHEREAS Metropolitan Council is constructing the Southwest Light Rail Transit (SWLRT) Green Line Extension through the cities of Minneapolis, St. Louis Park, Hopkins, Minnetonka and Eden Prairie, which includes reconstruction of the Cedar Lake Regional Trail;

WHEREAS the SWLRT and Cedar Lake Region Trail corridor run adjacent to the 325 Blake Road southern parcel boundary for over 1,000 linear feet, and design and construction of the light rail line includes grade separated elements at certain road intersections to promote safe passage of trail users, including the crossing at Blake Road, near the 325 Blake Road parcel boundary;

WHEREAS in March 2019, due to the close proximity of associated stormwater infrastructure and trail components, and in support of its continued partnership, MCWD granted Metropolitan Council a temporary construction easement on the 325 Blake Road site, approximately 9,525 square feet in size along the southern boundary of the parcel, for staging and construction of stormwater elements and reconstruction of the Cedar Regional Trail;

WHEREAS MCWD and Alatus Development, LLC (Alatus) have an executed purchase and sale agreement (PSA) and Alatus has an approved master development plan by the City of Hopkins for improvements to the 325 Blake Road site; and

WHEREAS the temporary easement expires in November 2022, and final construction of the Blake Road station area and associated improvements to the Cedar Lake Regional Trail have not yet been completed;

WHEREAS to address expiration of the temporary easement and anticipated ownership by Alatus, the first amendment to the temporary easement agreement acknowledges that the property may be developed, with certain improvements occurring within the temporary easement area, and sets forth mutually agreeable construction activities and a coordination framework to ensure all parties are aware of construction activities; and the amendment extends the expiration date to December 1, 2024, to accommodate final access and staging for the stormwater conveyance system;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers hereby approves the first amendment to the temporary easement agreement between MCWD and Metropolitan Council and authorizes the Administrator to execute the amendment with any non-substantive changes in consultation with legal counsel.

Resolution Number 22-062 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 11/3/2022

 Secretary Date: November 3, 2022

PARCEL P5003
FIRST AMENDMENT TO TEMPORARY EASEMENT AGREEMENT

THIS FIRST AMENDMENT TO TEMPORARY EASEMENT AGREEMENT (this “*First Amendment*”) is made and entered into this ___ day of _____, 2022, by and between the Minnehaha Creek Watershed District, a political subdivision of the State of Minnesota (“*Grantor*”), and the Metropolitan Council, a public corporation and political subdivision under the laws of the State of Minnesota (“*Grantee*”). This Agreement sometimes refers to Grantor and Grantee individually as a “*Party*” and collectively as the “*Parties.*”

WITNESSETH:

WHEREAS, Grantor is the owner of real property legally described on the attached Exhibit A (the “Property”).

WHEREAS, in order for Grantee to construct the Green Line Extension, also referred to as the Southwest Light Rail Project (the “Project” or “LRT”), Grantor and Grantee entered into a Temporary Easement Agreement, dated March 18, 2019, which was recorded with the Office of the Hennepin County Recorder on March 28, 2019 as Document No. A10646230, and filed with the Office of the Hennepin County Registrar of Titles on March 26, 2019 as Document No. T05602445 (the “Agreement”).

WHEREAS, subsequent to the Parties’ execution of the Agreement, at the request of Grantee the Parties wish to extend the duration of the Agreement to facilitate Grantee’s construction of the Project.

WHEREAS, the Property is subject to a Real Estate Purchase Agreement between Grantor, as seller, and Alatus Development LLC (“Alatus”), as buyer, as amended by First Amendment to Real Estate Purchase Agreement by and between Grantor, as seller, and Alatus, as buyer (collectively, the “Purchase Agreement”).

WHEREAS, Alatus or its affiliated designee intends to acquire the Property, per the Purchase Agreement, and to commence construction of a multifamily housing project and other related improvements on the Property, immediately adjacent to the Grantee’s property, and Alatus’ construction timeline and plans contemplates such construction occurring contemporaneously with Grantee’s Project construction.

WHEREAS, the Grantor, Grantee, and Alatus or their respective successors and assigns desire to cooperate during the Grantee's and Alatus' or their respective successors' and assigns' respective construction activities.

WHEREAS, the Parties desire to execute this First Amendment to set forth the terms of such cooperation and coordination of construction activities within the below-described easement area, and to modify the duration of the Agreement with a new expiration date.

WHEREAS, the Parties desire that all other terms of the Agreement continue unchanged and remain in full force and effect.

NOW THEREFORE, in consideration for the mutual promises made herein, the Parties agree as follows:

1. **Amendment of Temporary Construction Easement Agreement.** Section 1 of the Agreement is hereby deleted in its entirety and replaced with the following new Section 1:

1. **Grant of Temporary Easement.** Grantor hereby grants and conveys to Grantee, its agents, permittees, successors and assigns, the following described easement: A temporary, non-exclusive construction easement over, under and across that part of the Property legally described and depicted on the attached Exhibit B and B.1 (the "Temporary Construction Easement Area") to occupy in order to locate, install and construct, on and under lands adjacent to the Property, surface and subsurface trail and stormwater management facilities associated with the LRT and associated improvements (the "Temporary Construction Easement"). Grantee will not place any permanent structure on or under the Temporary Construction Easement Area.

Grantor, its successors and assigns, will not erect, construct, or create any building, improvement, obstruction, perpendicular utility crossing, or structure of any kind, either above or below the surface of the Temporary Construction Easement or plant any trees, or stockpile construction debris or construction equipment, or change the grade thereof of the Temporary Construction Easement Area without the express written permission of the Grantee, which permission will not be unreasonably withheld, conditioned or delayed.

The Parties acknowledge that the Property may be redeveloped with certain improvements and their approximate locations as shown on the site plan dated June 30, 2022 attached hereto and made a part of this Agreement as Exhibit C ("Site Plan") and, that upon the execution and recording of this Agreement and in consideration of such Property redevelopment, and notwithstanding the foregoing prohibitions on

Grantor's use of the Temporary Construction Easement Area, upon the effective date of this Agreement as written below, and until its expiration, the Parties agree to Grantor's use of the Temporary Construction Easement Area as specifically set forth below in Sections 1(A) through 1(D) as follows:

(A) the Grantor, its successors or assigns may construct vehicular and pedestrian access through the Temporary Construction Easement Area and coordinate access to and use of the Temporary Construction Easement Area without the express written permission of the Grantee, provided that Grantee and Grantor and their respective successors and assigns shall coordinate all of their respective construction activities in and vehicular and pedestrian access to and through the Temporary Construction Easement Area between Grantee's Council Authorized Representative ("CAR") or the CAR's designee and Grantor's, its successor's or assign's construction manager or its designee identified in Section 1(D)(v) (referred to for purposes of Section 1(A)-(D) as the "Grantor Contact"), so that the parties' concurrent access to, construction activities on, over, or under and use of the Temporary Construction Easement Area will occur and continue without undue interruption;

(B) Grantee and Grantor and their respective successors and assigns shall coordinate all of their respective access and construction activity in the Temporary Construction Easement Area between the CAR or the CAR's designee and the Grantor Contact, and to ensure the timing of Grantor's construction of its improvements on the Property as shown on the Site Plan so as to avoid any risk of loss to the Grantor's improvements prior to completion of Grantee's construction activities;

(C) Grantor and its successors and assigns shall be permitted, without Grantee's prior approval, to engage in and undertake in its sole discretion any and all construction activities in the Temporary Construction Easement Area, including without limitation constructing the building footings and improvements substantially similar in size and location to those depicted in the attached Site Plan within the Temporary Construction Easement Area, provided that Grantor, its successors and assigns and its contractor or designee coordinate such construction activities with the Grantee's CAR; and

(D) In the event Grantor desires to construct improvements deviating in kind or approximate location from those set forth in the Site Plan, Grantor must seek and receive Grantee's prior written approval for such deviation as follows:

- (i) Grantor, shall deliver written notice to the CAR specifically identifying such access, construction activities, or any other matters in, over, or under the Temporary Construction Easement Area that it desires deviation from the Site Plan and requesting Grantee's written approval (the "Notice");
- (ii) The Notice Date will be the date the Notice is delivered.
- (iii) Grantee shall respond in writing within five (5) business days following the Notice Date, to the Notice either (y) approving the access or activities described in the Notice, or (z) requiring alternative, commercially reasonable locations, timeframes, or time periods for such access or construction activities and coordination of the same with the CAR or CAR's designee.
- (iv) If the Grantee has not responded within five (5) business days after the Notice Date, the Grantee will be deemed to have approved the Grantor's requested access or construction activities as described in the Notice;
- (v) For purposes of Notice, the Grantee CAR's, name, address, phone and email are as follows:

Andrew Caulum, PE
Green Line Extension Project Office
Park Place West Building, Suite 500
6465 Wayzata Boulevard
St. Louis Park, MN 5542

612-322-5664

Andrew.caulum@metrotransit.org

For purposes of Notice, the Grantor Contact's name, address, phone and email are as follows:

Minnehaha Creek Watershed District
15320 Minnetonka Boulevard
Minnetonka, MN 55345
Attn: Michael Hayman]

952-471-8226

mhayman@minnehahacreek.org

With a copy to:

Alatus Development LLC
80 South Eighth Street, Suite 4155
Minneapolis, MN 55402
Attention: Matt Mason

(612) 455-0700
mwmason@alatusllc.com

In the event the CAR or Grantor Contact contact information changes, the parties will notify each other in writing.

2. **Amendment of Temporary Construction Easement Agreement.** Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following new Section 2:

2. Term of Temporary Construction Easement. The Temporary Construction Easement defined above shall commence on November 1, 2022 and expire on December 1, 2024; provided, however, that if Grantee's construction is completed upon the Property such that the Temporary Construction Easement is no longer legally necessary Grantee will promptly terminate the Agreement and the Temporary Construction Easement at such earlier time.

3. **Exhibits.** Exhibits A, B, B.1 and C of the Agreement are hereby deleted in their entirety and replaced with the Exhibits A, B, B.1 and C attached hereto. Any real property not described in Exhibit A attached hereto is hereby released from the Agreement.
4. **Execution.** This First Amendment may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and the counterparts together shall constitute one and the same First Agreement. A copy, facsimile copy or electronic copy of this First Amendment, including its signature pages, will be binding and deemed to be an original.
5. **Effect of Amendment.** The Agreement remains in full force and effect and is not modified except as expressly provided herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

CONSENT OF ALATUS DEVELOPMENT LLC

The undersigned, Alatus Development LLC, the purchaser on the property legally described herein and depicted in Exhibit A attached hereto, hereby consents to the execution and recording of this First Amendment to Temporary Construction Easement Agreement between Minnehaha Creek Watershed District, fee owner, and the Metropolitan Council.

ALATUS DEVELOPMENT LLC

By: _____

[Name]

Its: [Title]

STATE OF MINNESOTA)

) ss

COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____ 2022, by [Name], the [Title] of Alatus Development LLC, a limited liability company under the laws of the State of Minnesota, on behalf of the limited liability company.

Notary Public

This instrument drafted by:

Office of the General Counsel
Metropolitan Council
390 North Robert Street
Saint Paul, MN 55101

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Real property in the County of Hennepin, State of Minnesota, legally described as follows:

- Tract A. That part of Lot 4, Block 1, MILE 14 ON MINNEHAHA CREEK, embraced within Lot 74, Auditor's Subdivision Number 239, according to the plats thereof on file and of record, the title thereto being registered as evidenced by Certificate of Title No. 1547007;
- Tract B. That part of Lot 4, Block 1, MILE 14 ON MINNEHAHA CREEK, except that part embraced within Lot 74, Auditor's Subdivision Number 239, according to the plats thereof on file and of record;

EXHIBIT B

Parcel P5003 C.S. 2700 (XXX) SWR

S.P. 9909-01

PROPERTY LEGAL DESCRIPTION

Tract A. That part of Lot 4, Block 1, MILE 14 ON MINNEHAHA CREEK, embraced within Lot 74, Auditor's Subdivision Number 239, according to the plats thereof on file and of record, the title thereto being registered as evidenced by Certificate of Title No. 1547007;

Tract B. That part of Lot 4, Block 1, MILE 14 ON MINNEHAHA CREEK, except that part embraced within Lot 74, Auditor's Subdivision Number 239, according to the plats thereof on file and of record;

ACQUISITION DESCRIPTION:

TEMPORARY EASEMENT:

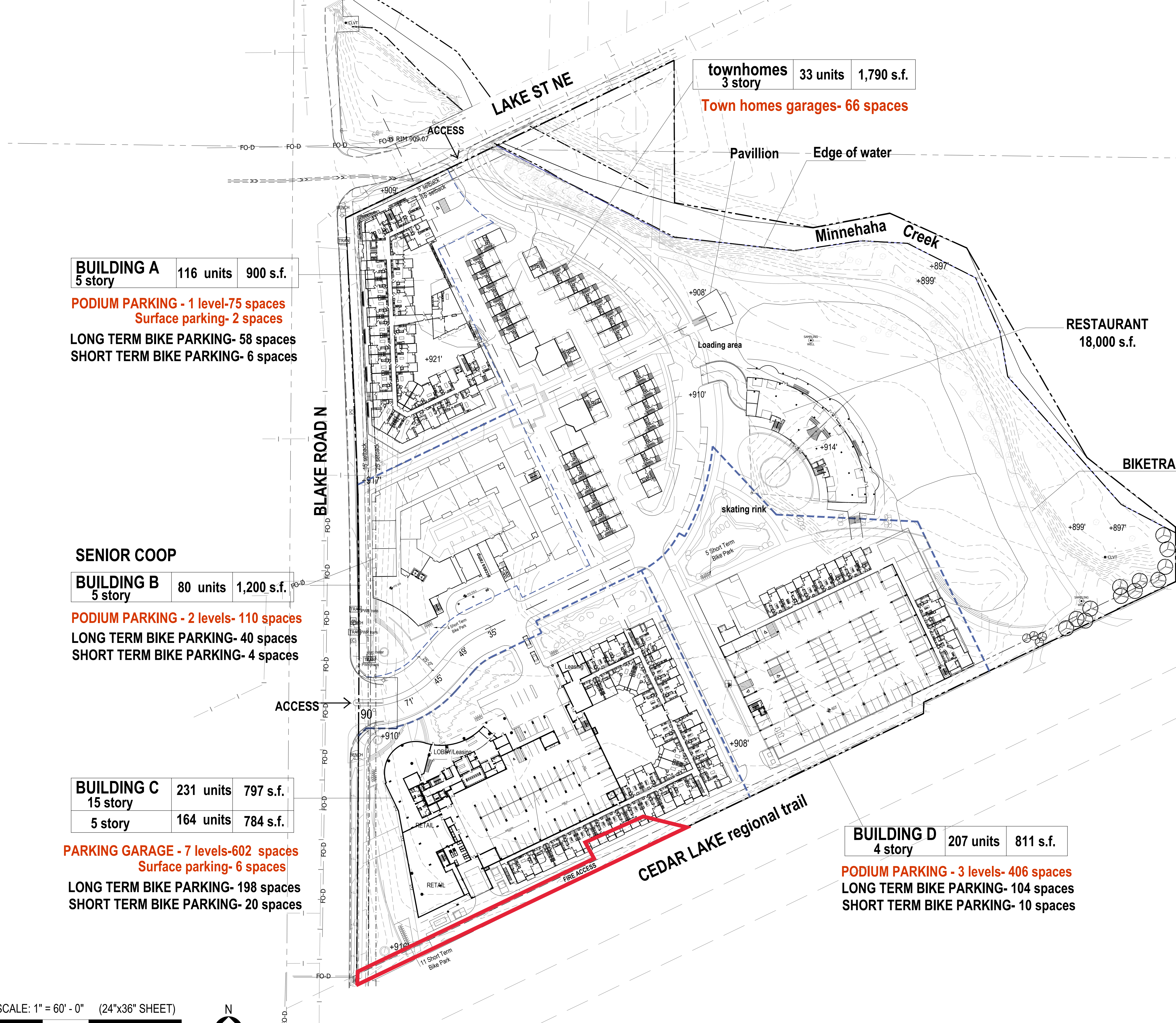
A right to use the following described strip for transportation purposes, which right shall cease on December 1, 2024, or on such earlier date upon which the Metropolitan Council determines that it is no longer needed for transportation purposes:

Beginning at the southwest corner of said Lot 4, Block 1, MILE 14 ON MINNEHAHA CREEK, thence on an assumed bearing of North 64 degrees 23 minutes 45 seconds East along the south line of said Lot 4 a distance of 468.41 feet; thence North 70 degrees 36 minutes 15 seconds West a distance of 56.57 feet; thence South 64 degrees 23 minutes 45 seconds West a distance of 80.59 feet; thence South 25 degrees 36 minutes 15 seconds East a distance of 24.00 feet; thence South 64 degrees 23 minutes 45 seconds West a distance of 340.00 feet to the west line of said Lot 4; thence South 0 degrees 25 minutes 48 seconds West along said west line of said Lot 4 a distance of 17.81 feet to the point of beginning; excluding therefrom the proposed buildings situate thereon.

EXHIBIT B.1

Temporary Construction Easement Area Depiction

[Attached]



townhomes
3 story 33 units 1,790 s.f.
Town homes garages- 66 spaces

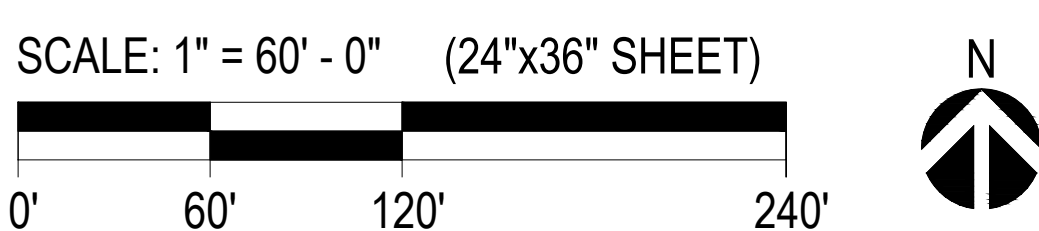
BUILDING A
5 story 116 units 900 s.f.
PODIUM PARKING - 1 level-75 spaces
Surface parking- 2 spaces
LONG TERM BIKE PARKING- 58 spaces
SHORT TERM BIKE PARKING- 6 spaces

SENIOR COOP
BUILDING B
5 story 80 units 1,200 s.f.
PODIUM PARKING - 2 levels- 110 spaces
LONG TERM BIKE PARKING- 40 spaces
SHORT TERM BIKE PARKING- 4 spaces

BUILDING C
15 story 231 units 797 s.f.
5 story 164 units 784 s.f.
PARKING GARAGE - 7 levels-602 spaces
Surface parking- 6 spaces
LONG TERM BIKE PARKING- 198 spaces
SHORT TERM BIKE PARKING- 20 spaces

BUILDING D
4 story 207 units 811 s.f.
PODIUM PARKING - 3 levels- 406 spaces
LONG TERM BIKE PARKING- 104 spaces
SHORT TERM BIKE PARKING- 10 spaces

Building	units	stories	NET avg
Building A	116 units	5 story over 1L podium	900 s.f
Building B	80 units	5 story over 2L podium	1,200 s.f
Building C-Tower	231 units	15 story	797 s.f
Building C-Wrap	164 units	5 story	784 s.f
Building D	207 units	4 story over 3L podium	811 s.f
Townhomes	33 units	3 story	1,790 s.f
TOTALS	831 units		



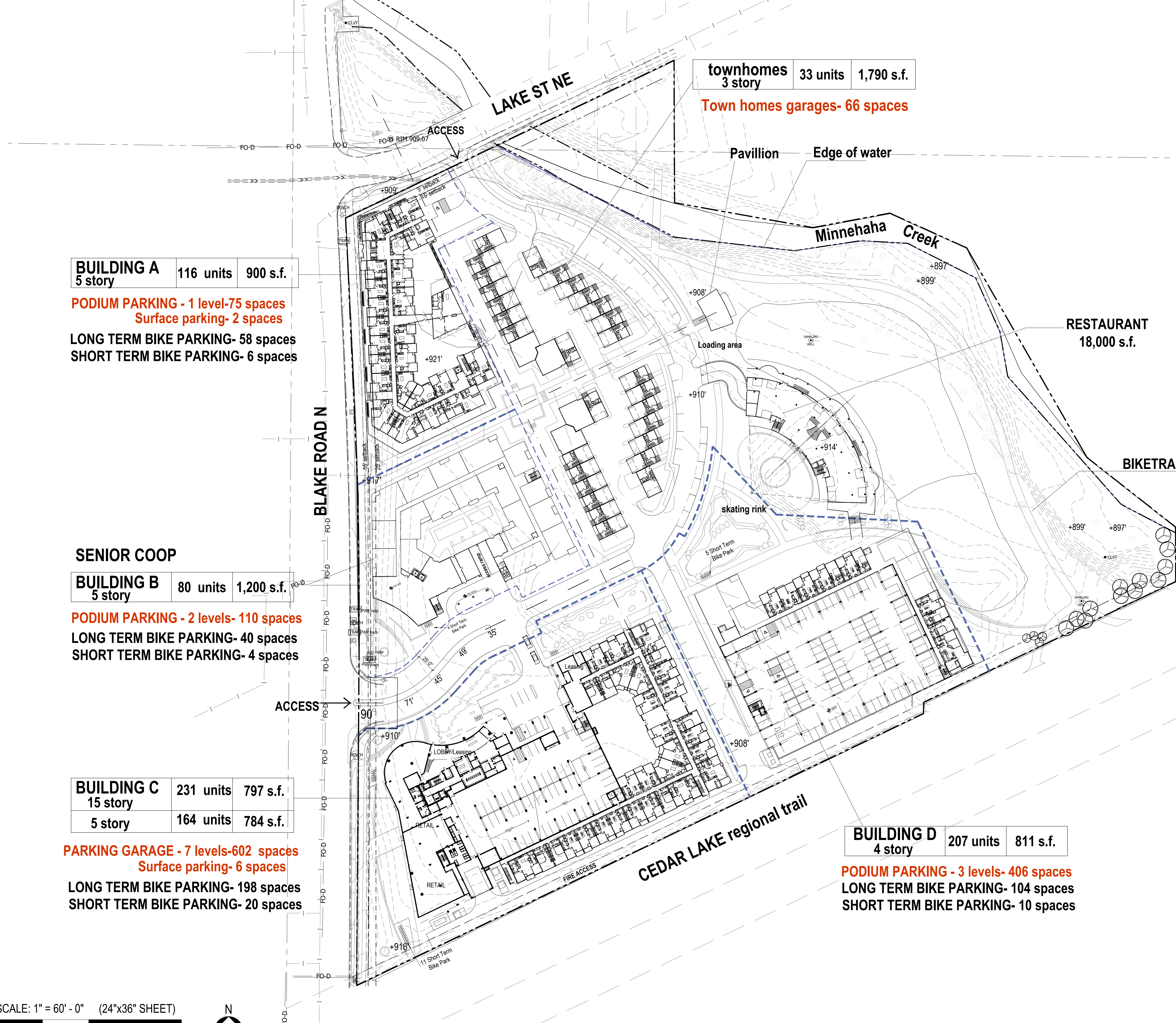
ARCHITECTURAL SITEPLAN

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EXHIBIT C

Site Plan dated June 30, 2022

[Attached]



townhomes
3 story 33 units 1,790 s.f.
Town homes garages- 66 spaces

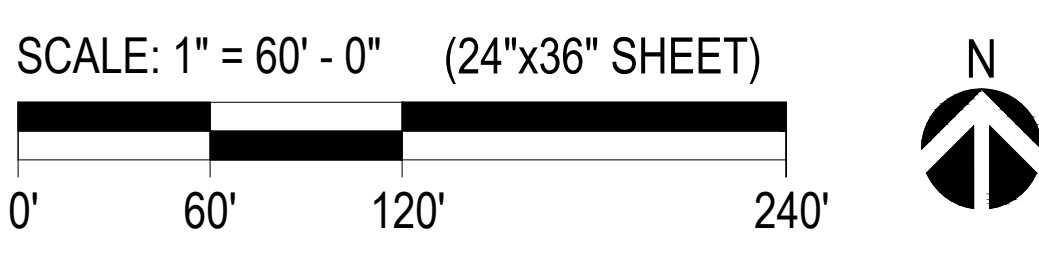
BUILDING A
5 story 116 units 900 s.f.
PODIUM PARKING - 1 level-75 spaces
Surface parking- 2 spaces
LONG TERM BIKE PARKING- 58 spaces
SHORT TERM BIKE PARKING- 6 spaces

SENIOR COOP
BUILDING B
5 story 80 units 1,200 s.f.
PODIUM PARKING - 2 levels- 110 spaces
LONG TERM BIKE PARKING- 40 spaces
SHORT TERM BIKE PARKING- 4 spaces

BUILDING C
15 story 231 units 797 s.f.
5 story 164 units 784 s.f.
PARKING GARAGE - 7 levels-602 spaces
Surface parking- 6 spaces
LONG TERM BIKE PARKING- 198 spaces
SHORT TERM BIKE PARKING- 20 spaces

BUILDING D
4 story 207 units 811 s.f.
PODIUM PARKING - 3 levels- 406 spaces
LONG TERM BIKE PARKING- 104 spaces
SHORT TERM BIKE PARKING- 10 spaces

Building	units	stories	NET avg
Building A	116 units	5 story over 1L podium	900 s.f
Building B	80 units	5 story over 2L podium	1,200 s.f
Building C-Tower	231 units	15 story	797 s.f
Building C-Wrap	164 units	5 story	784 s.f
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Townhomes	33 units	3 story	1,790 s.f
TOTALS	831 units		



ARCHITECTURAL SITEPLAN

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