



# PLANNING COMMISSION STAFF REPORT

## Proposed CIC Plat

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**FROM:** Dan Olson, City Planner

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**TO:** Planning Commission (for November 13 Meeting)

**DATE:** November 7, 2023

**RE:** PUBLIC HEARING - Subdivision request for approval of a Common Interest Community (CIC) Plat for Mahmoud Abumayyaleh at 6613 – 36<sup>th</sup> Avenue North (Application Number 2023-08)

### A. BACKGROUND

Mahmoud Abumayyaleh, owner of the property at 6613 – 36<sup>th</sup> Avenue North, is proposing a Common Interest Community (CIC) plat application, commonly called a “condominium”. The property is zoned Low Density Residential (R-1).

Notice of the November 13 public hearing was published in the Sun Post on November 2, mailed to owners and renters within 500 feet (attachment A) and posted to all neighborhoods on Nextdoor. A sign was also posted on the property.

#### **Attachments:**

- A. Site location and public hearing notice mailing map
- B. Zoning map
- C. Current property photos
- D. Memorandum from city attorney
- E. Proposed CIC plat (2 sheets)

**B. PROPOSED CIC PLAT**

Existing use

The property is the location for a two-family dwelling on a single lot.

Proposed use

The applicant is requesting approval of a CIC plat, in which the two dwelling units would continue to be addressed as 6613 - 36<sup>th</sup> Avenue North, Units A and B. The CIC plat will allow both units to be sold separately, but does not cause a division of land.

**C. SUBDIVISION CRITERIA**

The CIC plat involves a division of ownership rather than a division of land and the Unified Development Code (UDC) does not have specific criteria for approval of this type of subdivision. Hennepin County does not require city approval of a CIC plat.

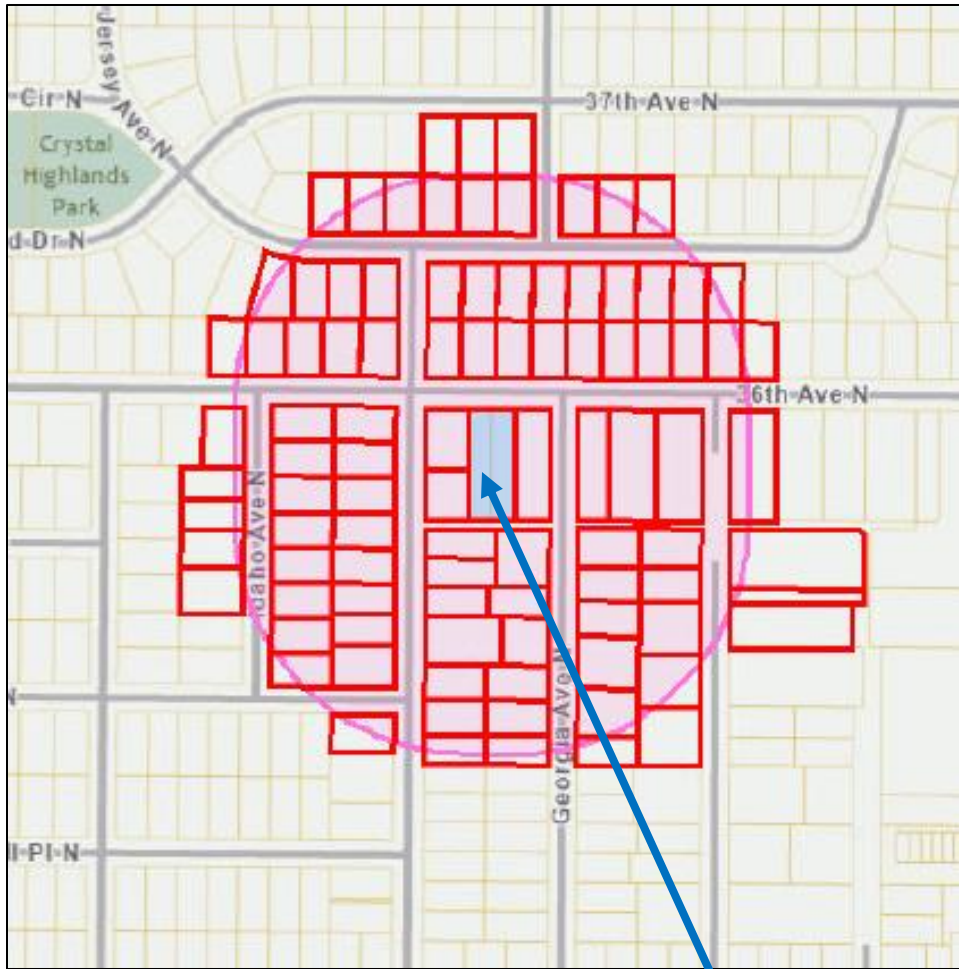
The city attorney has provided a memorandum (attachment D) discussing the basic elements of CIC plats, including how they are regulated by state statute. The attorney has concluded that the UDC does not have any applicable criteria which could be used to deny the CIC plat application.

**D. REQUESTED ACTION**

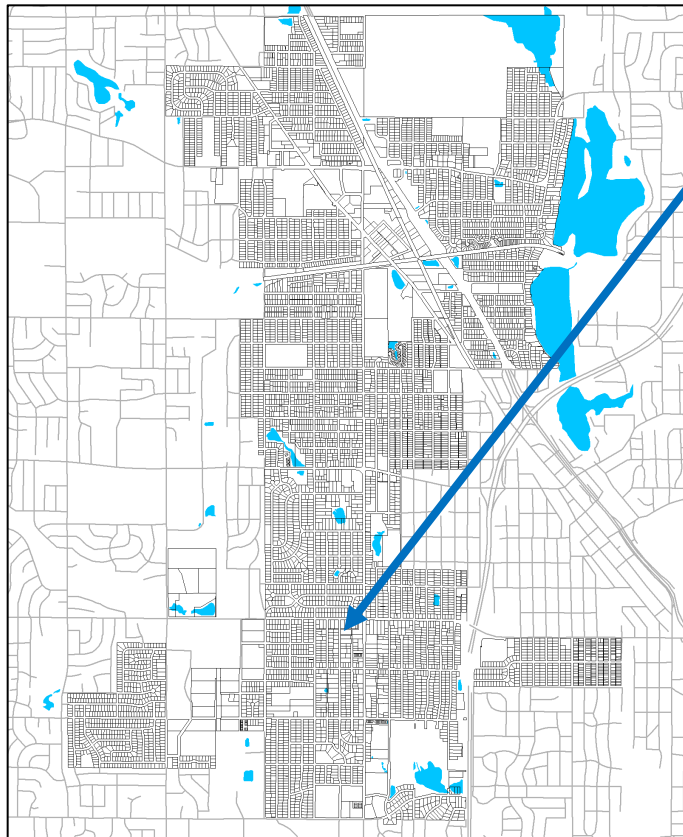
Since the UDC does not provide applicable criteria for denial of the proposed CIC plat, staff is recommending approval of the Common Interest Community (CIC) plat at 6613 – 36<sup>th</sup> Avenue North.

City Council action is anticipated on November 21, 2023.

# Site Location and Public Hearing Notice Mailing Map



Attachment A



6613 – 36<sup>th</sup> Ave N

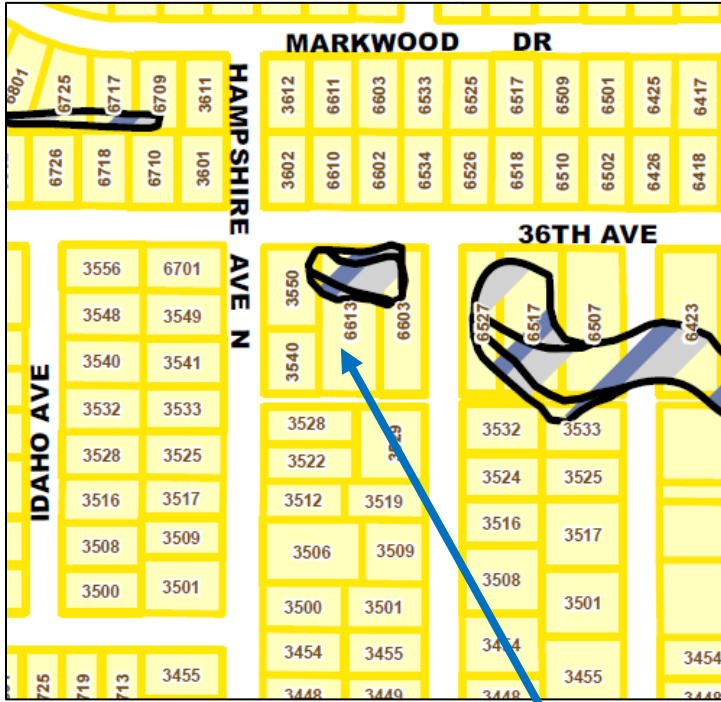


**CITY of CRYSTAL**

**4141 Douglas Dr. N.  
Crystal MN 55422**

# Zoning Map

## Attachment B

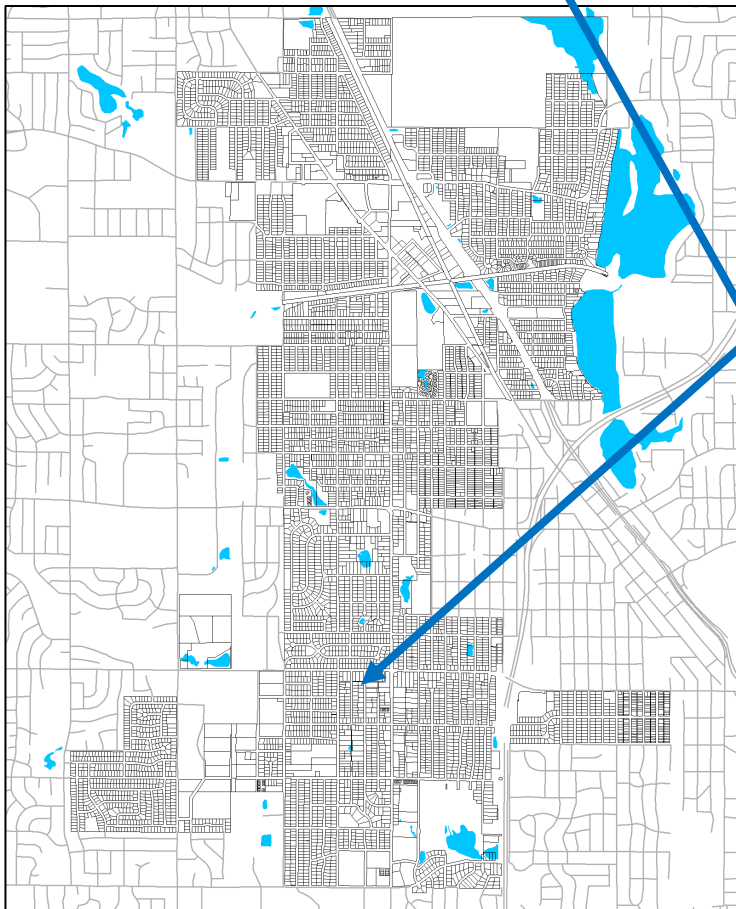


### BASE ZONING DISTRICTS:

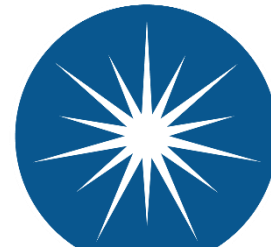
- R1 - LOW DENSITY RESIDENTIAL
- R2 - MEDIUM DENSITY RESIDENTIAL
- R3 - HIGH DENSITY RESIDENTIAL
- C - COMMERCIAL
- TC - TOWN CENTER
- I - INDUSTRIAL
- AP - AIRPORT DISTRICT

### OVERLAY DISTRICTS:

- Planned Development Districts (PD)
- Town Center Planned Development (TC-PD)
- Properties Rezoned to TC-PD
- Floodplain Overlay District



6613 – 36<sup>th</sup> Ave N



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Crystal MN 55422

**Attachment C**



**Facing Alley**



**Facing  
Wooded area  
along 36th  
Ave N**

## Attachment D

Kennedy

&

Graven

CHARTERED

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Minneapolis MN 55402  
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(612) 337-9310 fax  
tgilchrist@kennedy-graven.com  
<http://www.kennedy-graven.com>

### MEMORANDUM

To: Dan Olson, City Planner

From: Troy Gilchrist, City Attorney

Date: November 6, 2023

Re: Proposed CIC Plat for the Property Located at 6613 – 36th Avenue North

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Common interest communities (“CICs”) are regulated under Minnesota Statutes, chapter 515B and allow for a variety of potential ownership structures that may include the division of real estate into separately owned parcels, common ownership of the entire property with separate leased units, the division and separate ownership of units within a structure, and others. The Uniform Development Code (“UDC”) includes CICs in its definition of a subdivision specifically because they may involve the division of real estate. In those cases, the City has the same interest in reviewing the CIC subdivision as it does with any other subdivision of real estate. However, when a proposed CIC only involves dividing parts of a structure, not the underlying real estate, the City’s subdivision regulations do not apply in any traditional sense. These types of structural divisions are called condominiums and include situations where, for example, the owner of an apartment building converts the apartments into separately owned condos. However, because the UDC does not expressly exclude condominiums from the definition of subdivision, an owner proposing to establish a condominium CIC plat is required to apply to the City for approval.

It is important to note that the law is protective of CICs. Under Minnesota Statutes, section 515B.1-106, a “zoning, subdivision, building code, or other real estate use law, ordinance, charter provision, or regulation may not directly or indirectly prohibit the common interest community form of ownership or impose any requirement upon a common interest community, upon the creation or disposition of a common interest community or upon any part of the common interest community conversion process which it would not impose upon a physically similar development under a different form of ownership.” There are some exceptions to this general rule that are not applicable here, but you can see the Legislature wanted to make sure a local government does not prohibit CICs or single them out for additional regulations.

The proposed CIC here is for a condominium, meaning only the structure is divided to allow for separate ownership of each unit. The real estate is not being divided and so, as noted above, the traditional regulations for considering a subdivision of real estate really do not fit in cases such as this. The City did attempt to amend the UDC to limit the application of its subdivision regulations to only those CICs that involved the division of the real estate, but the ordinance making those amendments was subject to a petition calling for a referendum vote and so the City Council decided not to pursue it. That has resulted in requiring the owner to go through the subdivision process for a CIC that does not involve the division of real estate. Something that would have been avoided if the amendments had gone into effect.

In case the issue is raised during the consideration of the proposed CIC, the original decision of the District Court case that invalidated the subdivision of the property into two lots does not apply to the division of a structure. As you know, that case focused on interpretations of specific UDC provisions related to the size of the resulting lots, their frontage, etc. Because no new lots are being created here, those provisions do not apply. Further, any attempt to artificially apply them could be challenged as being arbitrary and capricious, as well as being contrary to the protections offered CICs in the language quoted above.

In sum, the City needs to process and act on the proposed CIC plat under the present language of the UDC, but there are essentially no subdivision standards that apply to the division of a structure. The owner decides whether to divide a structure and the City has no direct control over that decision. I understand the County does not require City approval to record such a division.

As we discussed, I plan to attend the Planning Commission meeting in case there are any questions. Feel free to let me know if you have any questions or comments.

# CIC NUMBER 2196

## A CONDOMINIUM

# CRYSTAL FLATS

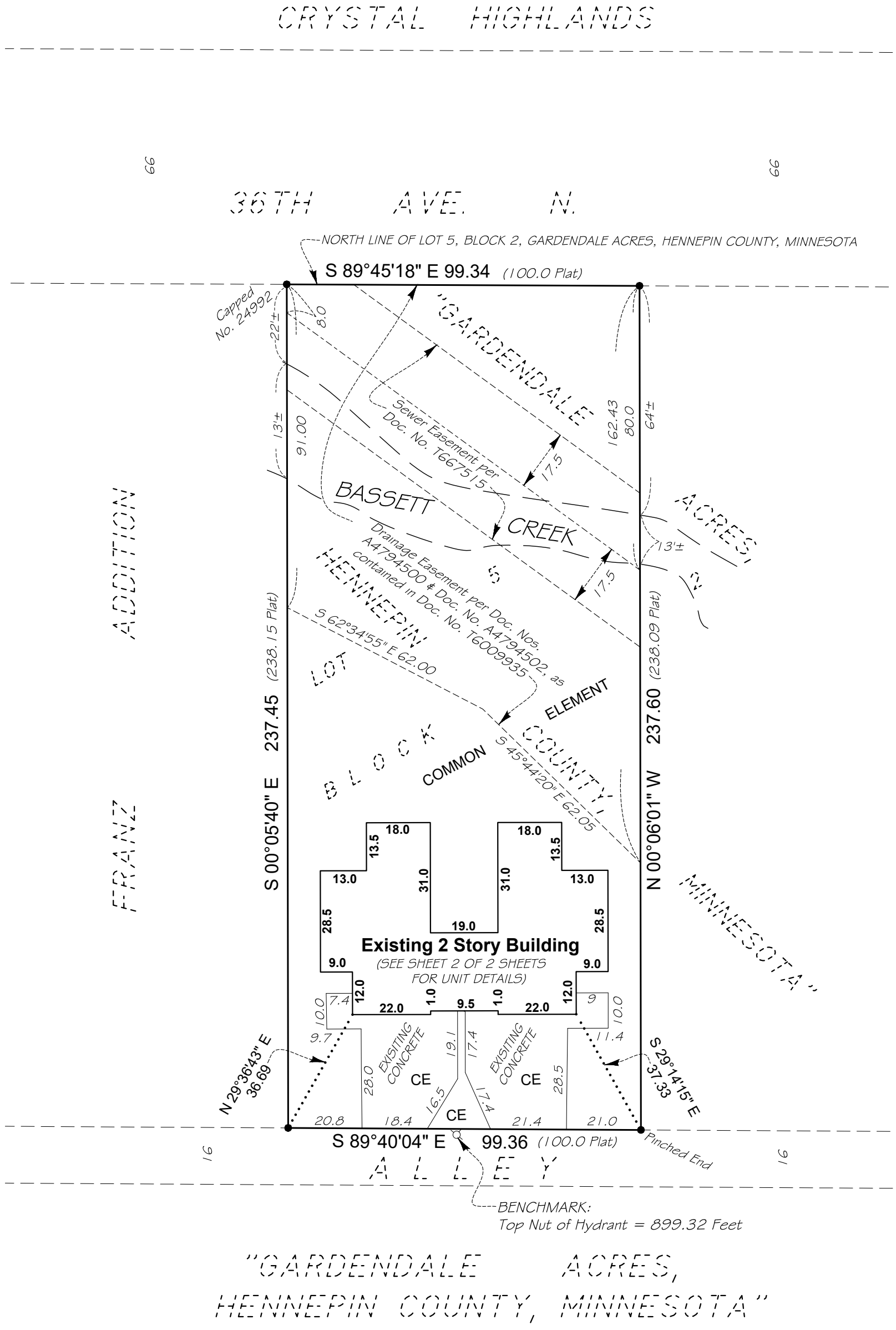
### CIC PLAT

Attachment E

This CIC Plat is part of the Declaration filed as Document No. \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
Hennepin County Registrar of Titles  
CERTIFICATE No.(s) \_\_\_\_\_

## SITE PLAN



I, Gregory R. Prasch, do hereby certify that the work was undertaken by or reviewed and approved by me for this CIC Plat of CIC NUMBER 2196, a condominium, CRYSTAL FLATS, being located upon:

Lot 5, Block 2, "GARDENDALE ACRES, HENNEPIN COUNTY, MINNESOTA".

And that this CIC plat fully and accurately depicts all information required by Minnesota Statutes, Section 515B.2-1101(c); and that I am a duly Licensed Land Surveyor under the laws of the state of Minnesota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Gregory R. Prasch, Licensed Land Surveyor  
Minnesota License No. 24992

State of Minnesota  
County of Hennepin  
This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Gregory R. Prasch, a Licensed Land Surveyor.

\_\_\_\_\_  
Notary Public, Hennepin County, Minnesota  
My Commission Expires \_\_\_\_\_ (printed Notary's name)

I, \_\_\_\_\_, pursuant to Minnesota Statutes 515B.2-101(c) do hereby certify that the structural components of the structures containing the units and the mechanical systems serving more than one unit are substantially completed, and that I am a duly Licensed Professional \_\_\_\_\_ under the laws of the State of Minnesota.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_ a Licensed \_\_\_\_\_, Minnesota License No. \_\_\_\_\_

State of Minnesota  
County of Hennepin  
This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ a Licensed \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, Hennepin County, Minnesota  
My Commission Expires \_\_\_\_\_ (printed Notary's name)

Survey Division  
Hennepin County, Minnesota  
This CIC plat has been reviewed and is approved this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Chris F. Mavis, Hennepin County Surveyor

By: \_\_\_\_\_

For the purposes of this plat the north line of Lot 5, Block 2, "GARDENDALE ACRES, HENNEPIN COUNTY, MINNESOTA" is assumed to bear South 89°45'18" East

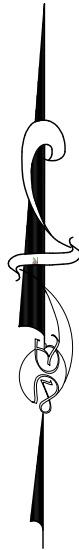
• DENOTES FOUND 1/2 INCH OPEN END IRON PIPE MONUMENT, UNLESS OTHERWISE NOTED.

CE DENOTES COMMON ELEMENT

BENCHMARK: TOP NUT OF HYDRANT LOCATED ON THE SOUTH SIDE OF PROPERTY BETWEEN THE DRIVEWAYS AS SHOWN HEREON.  
ELEVATION = 899.32 FEET (N.G.V.D. 1929)

BUILDING DIMENSIONS SHOWN ARE BUILDING EXTERIOR MEASUREMENTS.

("Plat") REFERS TO THE RECORD PLAT OF "GARDENDALE ACRES, HENNEPIN COUNTY, MINNESOTA."





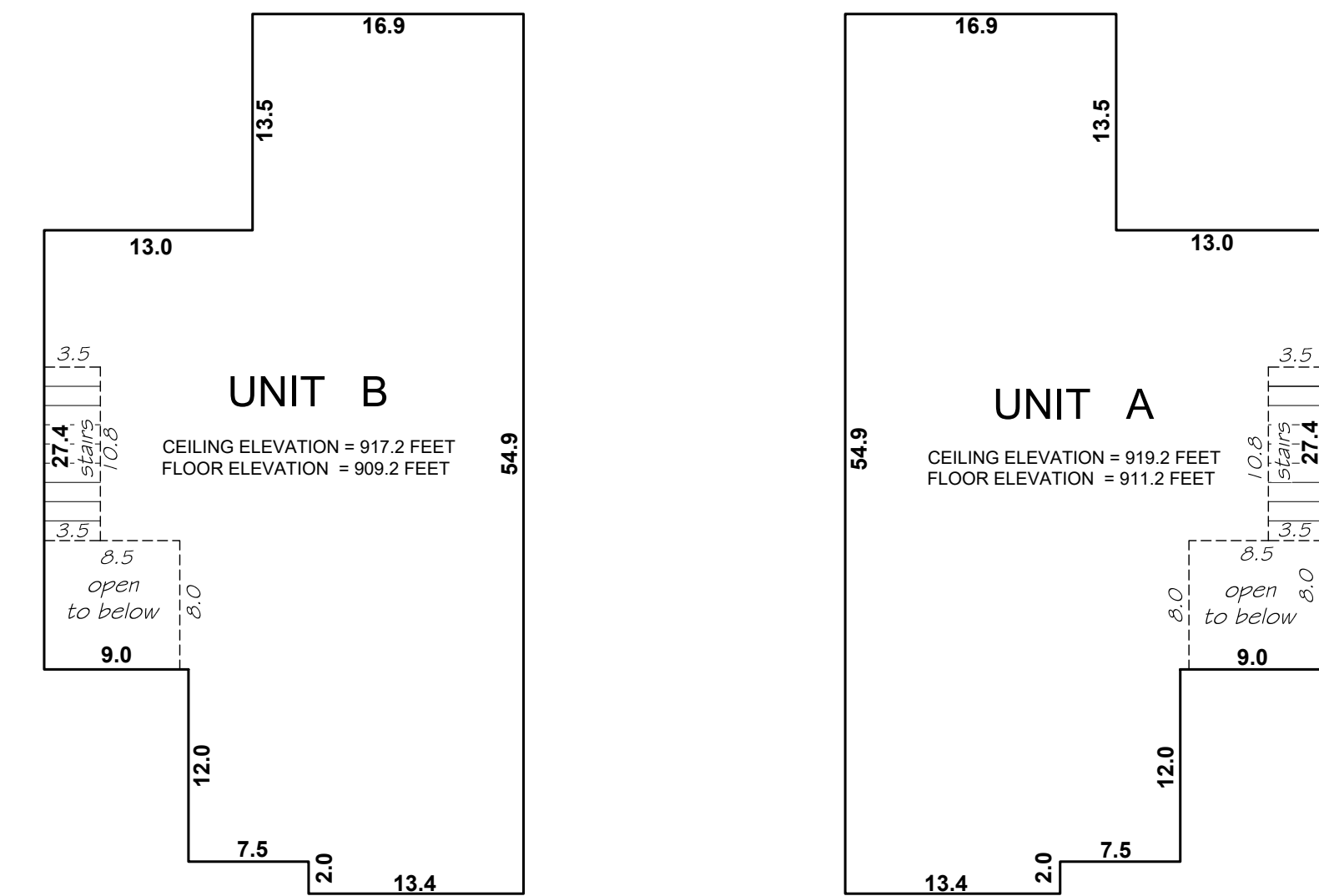
FLOOR PLAN

CIC NUMBER 2196

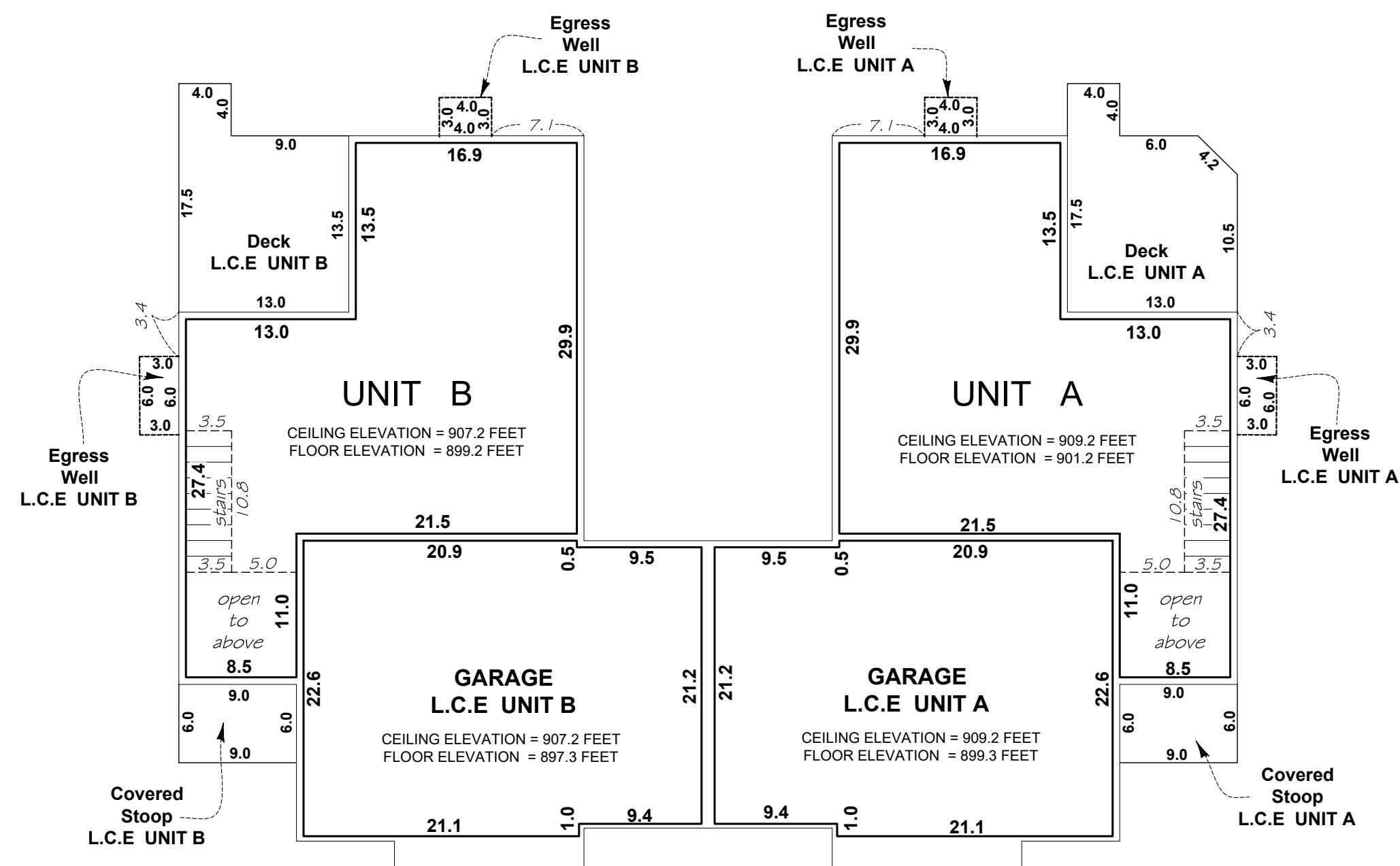
A CONDOMINIUM

CRYSTAL FLATS

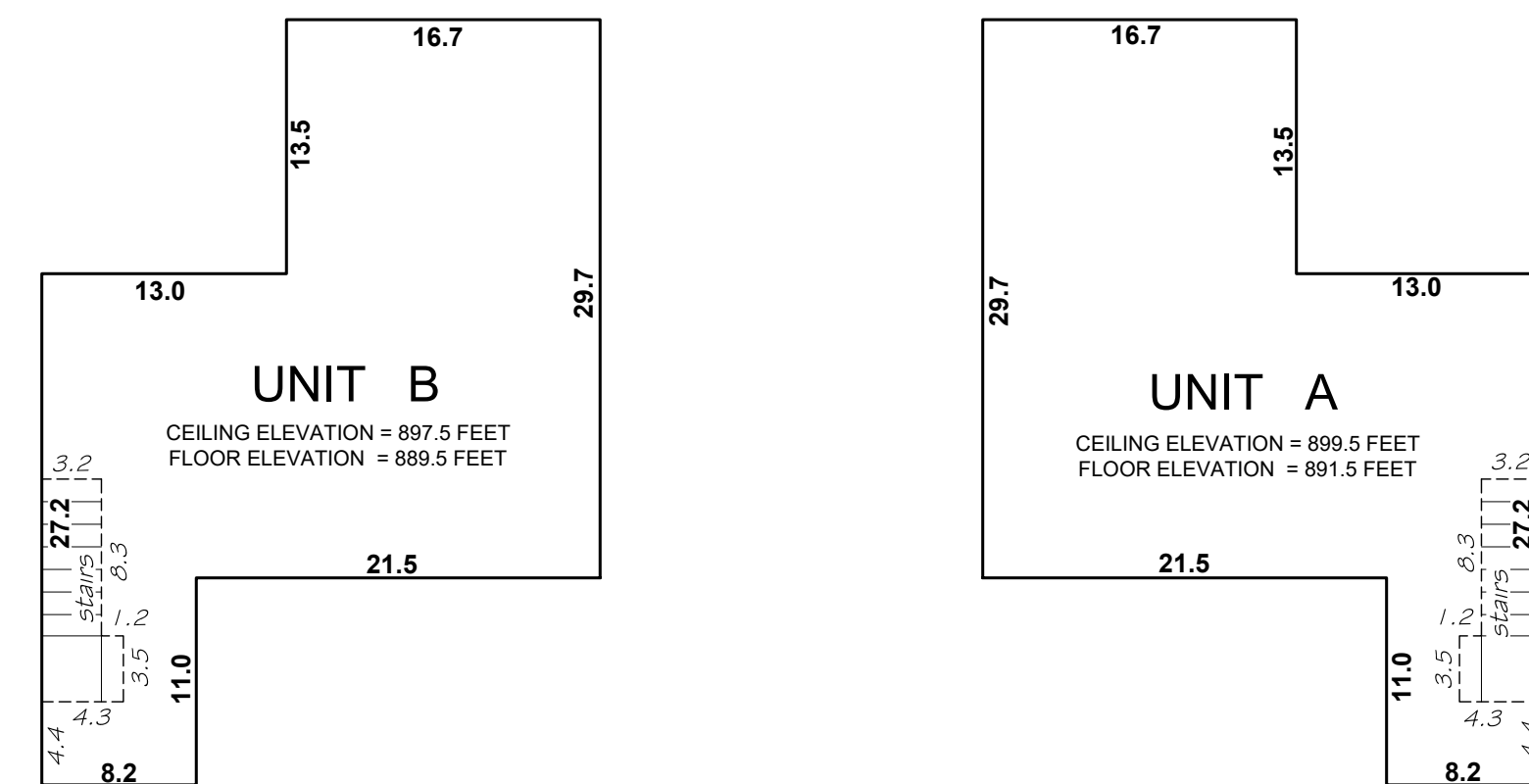
CIC PLAT



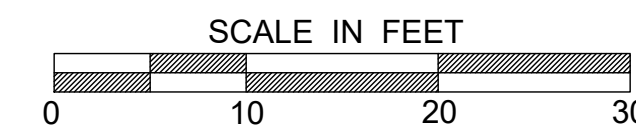
SECOND FLOOR



FIRST FLOOR



BASEMENT FLOOR



L.C.E. DENOTES LIMITED COMMON ELEMENT

INTERIOR BUILDING DIMENSIONS SHOWN ARE IN FEET AND TENTHS OF A FOOT

ELEVATIONS SHOWN ARE IN FEET AND TENTHS OF A FOOT AND ARE REFERENCED TO A BENCHMARK SHOWN ON THE SITE PLAN. (SEE SHEET 1 OF 2 SHEETS)