

When Recorded Return To:

Virtua Bennett Estates Owner, LLC  
17470 N. Pacesetter Way  
Scottsdale, Arizona 85255  
Attention: Quynh Palomino

## **DRAINAGE AND ACCESS EASEMENT AGREEMENT**

This Drainage and Access Easement Agreement ("Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_, by and between: (i) Virtua Bennett Estates Owner, LLC, an Arizona limited liability company as to a 34% tenant in common interest in the Virtua Property and Virtua Bennett Estates Owner 2, LLC, an Arizona limited liability company, as to a 66% tenant in common interest in the Virtua Property Curtis Commons Homeowners' Association, an Arizona non-profit corporation, and the City of Goodyear. Virtua, Curtis and the City are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

### **RECITALS**

A. Virtua Bennett Estates Owner, LLC, an Arizona limited liability company, as to a 34% tenant in common interest and Virtua Bennett Estates Owner 2, LLC, an Arizona limited liability company, as to a 66% tenant in common interest owns the real property located in the City of Goodyear, Maricopa County, Arizona and legally described on Exhibit A attached to this Agreement (the "Virtua Parcel"), which they intend to develop under the name of Bennett Meadows.

B. Curtis Commons Homeowners' Association, an Arizona non-profit corporation owns real property located adjacent to the Virtua Parcel and legally described on Exhibit B attached to this Agreement (the "Drainage Basin Parcel").

C. The Drainage Basin Parcel is used to retain storm water from development known as Curtis Commons and storm water run-off from adjacent roadways.

D. Virtua desires to obtain and Curtis is willing to grant Virtua a non-exclusive easement for the benefit of the Virtua Parcel to allow storm water flows generated by storm events that generate flows in excess of 100-year 6-hour storm events to flow over, under, and across the Drainage Parcel (the "Excess Storm Water Flows").

E. Because the drainage solution for Bennett Meadows contemplates the Excess Storm Water Flows flowing over, under and across the Drainage Basin Parcel, the City of Goodyear is being added as a party to this Agreement to ensure that the easement being granted herein remains in place.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Terms not defined elsewhere in this Agreement shall have the following meanings:

a. City means the City of Goodyear, an Arizona municipal corporation, its successors and assigns.

b. Grantor or Curtis means Curtis Commons Homeowners' Association, an Arizona non-profit corporation, on behalf of itself and its successor and assigns, which includes all future owners of all or a part of the Drainage Basin Parcel.

c. Parties means Curtis Commons Homeowners' Association, an Arizona non-profit corporation, Virtua Bennett Estates Owner, LLC, an Arizona limited liability company and Virtua Bennett Estates Owner 2, LLC, an Arizona limited liability company, and the City of Goodyear, an Arizona municipal corporation collectively.

d. Party means Curtis Commons Homeowners' Association, an Arizona non-profit corporation, or Virtua Bennett Estates Owner, LLC, an Arizona limited liability company and Virtua Bennett Estates Owner 2, LLC, an Arizona limited liability company, or the City of Goodyear, an Arizona municipal corporation as the context dictates.

e. Virtua means collectively Virtua Bennett Estates Owner, LLC, an Arizona limited liability company, as to a 34% tenant in common interest in the Virtua Property and Virtua Bennett Estates Owner 2, LLC, an Arizona limited liability company, as to a 66% tenant in common interest in the Virtua Property their successors and assigns, which includes all future owners of all or a part of the Virtua Property, including but not limited to the Bennett Meadows homeowners association, and excluding owners of any lot within the Virtua Property that has been fully subdivided pursuant to a recorded final plat and for which a Certificate of Occupancy for a single family residence has been issued.

2. Grant of Easement. Curtis grants and conveys to Virtua, for the benefit of the Virtua Parcel, a non-exclusive easement upon, over, under, and across the Drainage Basin Parcel for allowing excess storm water flows from the Virtua Parcel generated by storm events that generate flows in excess of 100-year 6-hour storm events to flow over, under, and across the Drainage Parcel (the "Excess Storm Water Flows") and for providing access as needed to undertake all actions required under this Agreement.

3. Preservation of Drainage Openings. The Parties agree to preserve the drainage openings on their respective sides of the wall along the boundaries of the Virtua Parcel and Drainage Basin Parcel.

4. Erosion Damage Repair. Storm water flows from the Virtua Parcel to the Drainage Basin Parcel have caused existing erosion damage on the Drainage Basin Parcel. Virtua agrees to restore, at no cost to Curtis, the existing erosion damage on the Drainage Basin Parcel caused by the storm water flows that have passed from the Virtua Parcel to the Drainage Basin Parcel. Virtua agrees to restore the existing erosion damaged areas in the Drainage Basin Parcel by re-grading the existing damage areas of the Drainage Basin Parcel, replacing and/or raking the decomposed granite and replacing and/or installing rip rap as needed. Any granite installed shall, to the extent

reasonably possible, match the granite in the adjacent undamaged portions of the Drainage Basin Parcel. The restoration of the existing erosion damaged areas shall be completed within three months of recording of this Agreement. In addition to repairing the existing erosion damaged areas, Virtua, and its successors and assigns, including the Bennet Meadows Homeowners Association, shall be responsible for all future erosion damage on the Drainage Basin Parcel that is caused by storm water flows that have passed from the Virtua Parcel to the Drainage Basin Parcel.

5. Reasonable Use of Easement Area Preservation of Drainage Basin Improvements. The easement granted by this Agreement is non-exclusive. Curtis has the right to use and occupy, and to grant others the right to use and occupy, all or any portion of the Curtis Parcel for any purpose consistent with this Agreement and which does not impair or limit the rights of Virtua. Curtis shall not take or permit any action that removes or damages any improvement to the Drainage Basin Parcel, and if it does so, it shall promptly restore or repair all such improvements.

6. Termination. This Agreement and the easement granted herein cannot be amended, modified, or terminated without the express written consent of all of the Parties to this Agreement.

7. Insurance and Indemnification. Prior to any entry upon or performing work within the Drainage Basin Parcel, Virtua shall maintain, and shall require their agents, delegees, contractors and their subcontractors to maintain, at all times workers' compensation insurance as required by state law and commercial liability insurance covering any personal injury and property damage arising in connection with the work or the entry upon the Easement Area in the following amounts:

a. Employers liability coverage with a limit of not less than \$500,000 each accident, disease each employee and disease

b. Commercial general liability coverage with a limit of not less than \$2,000,000 each occurrence, \$3,000,000 annual aggregate, with coverage not containing any endorsements excluding or limiting product/completed operations, contractual liability or cross liability; and

c. Business auto liability coverage with a limit of not less than \$2,000,000 each occurrence, including liability for owned, non-owned and hired automobiles.

Such policies shall name Curtis as an additional insured and Virtua shall provide Curtis with certificates of insurance evidencing the required coverage prior to entering onto the Easement Area. Virtua will indemnify, defend and save Curtis harmless for, from and against any and all loss, damage, liabilities, claims or expenses (including but not limited to reasonable attorneys' fees and costs) Curtis may sustain arising out of or arising in any manner to the activities of such Party or any representatives, agents, delegees, employees, contractors, or subcontractors of such Party while exercising any of the temporary easement rights granted herein, except to the extent and in proportion caused by Curtis.

8. Liens. Virtua shall not permit any mechanic's liens or other liens to be placed upon the Drainage Basin Parcel in connection with the exercise of its rights under this Agreement. In the

event of the filing of any such lien, Virtua shall promptly pay the amount of such lien and ensure its discharge.

9. Miscellaneous:

a. Runs with the Land. The covenants, rights, and obligations set forth herein, including the easement granted herein, run with the land and are binding upon Curtis and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Drainage Basin Parcel and upon Virtua and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Virtua Parcel, except owners of any lot within the Virtua Parcel that has been fully subdivided pursuant to a recorded final plat and for which a Certificate of Occupancy for a single family residence has been issued shall not have personal rights or liability but the homeowners association for the Virtua Parcel shall then have the rights and perform the obligations of Virtua on behalf of each such owner . The covenants, rights and obligations set forth herein, including the easement granted herein shall extend and inure in favor and to the benefit and burden of, and the City and its successors and assigns. An owner of one or more lots in the Virtual Parcel shall have no further obligations hereunder as to a lot for events occurring after it has conveyed title to such lot.

b. Breach. The easements granted herein are required as a condition for the recordation of a final plat subdividing the Virtua Parcel. Accordingly, Curtis, the City and Virtua acknowledge and agree that once the final plat is recorded, the easements granted in this Agreement cannot be terminated and the sole remedy for any breach of the terms of this Agreement is limited solely to monetary damages and/or, if applicable, specific performance.

c. Invalidity. If any term, provision, or covenant in this Agreement is to any extent invalid or unenforceable, the remainder of this Agreement will not be affected, and each other term, provision, and condition hereof will be valid and enforceable to the fullest extent permitted by law.

d. Counterparts. This Agreement may be executed in duplicate counterparts, and the counterparts together shall constitute the single binding agreement of the Parties. Facsimile transmission of a counterpart signed by a Party shall be deemed as signed by such Party for purposes hereof provided however, Virtua and Curtis shall each deliver an original to the City for recordation in the Official Records of Maricopa County.

e. Attorney Fees. If any Party brings suit to enforce the terms and provisions hereof, or to recover damages for the breach of this Agreement, the prevailing Party will be entitled to recover from the other Party all costs, expenses, and reasonable attorneys' fees incurred in connection with the exercise by the prevailing Party of its rights and remedies hereunder. For purposes of this section, the term "prevailing Party" means, in the case of the plaintiff or claimant, one who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, one who is successful in denying substantially all of the relief sought be the claimant. Any award of attorneys' fees will be set by the court and not by the jury.

f. Governing Law. This Agreement will be governed by the laws of the State of Arizona.

g. Headings and Interpretation. Headings in the Agreement are for convenience only and will not define or limit the provisions hereof. This Agreement will be construed according to its ordinary meaning and will not be strictly construed for or against any Party.

h. Final Agreement of the Parties. This Agreement is an integrated agreement and expresses the Parties' complete agreement and understanding. Any and all prior or contemporaneous oral agreements or prior written agreements between the Parties regarding the subject matter of this Agreement are merged herein and hereby extinguished. Any modification or waiver of any term of this Agreement must be in writing signed by the Parties.

i. Additional Acts. The Parties agree to execute such additional documents and to perform such additional acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

j. No Public Rights Created. Nothing contained in this Agreement will be deemed a gift or dedication of any portion of the Parcels to the general public or for any public use or purpose whatsoever. This Agreement is binding upon and inures only to the benefit of Parties and their respective, heirs, successors and assigns; no benefit is intended to be nor is conferred by this Agreement upon any other or third party.

k. Effective Date. This Agreement will be effective upon recordation in the official records of Maricopa County, Arizona.

l. Notice. All notices, approvals, and other communications provided for or given in connection with this Agreement will be validly given, made, delivered, or served, if in writing, and delivered personally by certified U.S. Mail, or sent by nationally recognized overnight courier.

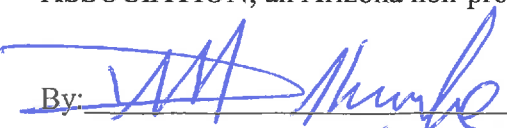
m. Authority. Each Party hereby warrants that the persons executing this Agreement on behalf of such Party has the authority to do so and that all persons necessary to bind the Parties to this Agreement have joined in this document.

*[Signatures, Acknowledgments and Exhibits on Following Pages]*

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

**CURTIS:**

CURTIS COMMONS HOMEOWNERS'  
ASSOCIATION, an Arizona non-profit corporation

By: 

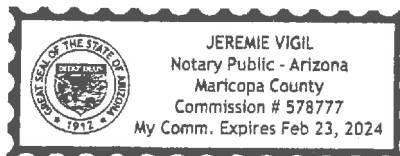
Name: Danna Kiracofe

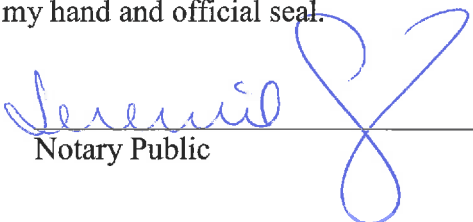
Its: Curtis Commons, HOA Board President

STATE OF ARIZONA       )  
                                          )ss.  
County of Maricopa       )

This Drainage and Access Easement Agreement was acknowledged before me on this 11th day of February, 2021, by Danna Kiracofe, the HOA Board President of Curtis Commons Homeowners' Association, an Arizona non-profit corporation, for and on behalf thereof.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



  
Notary Public

*[Signatures, Acknowledgments and Exhibits on Following Pages]*

VIRTUA:

VIRTUA BENNETT ESTATES OWNER,  
LLC, an Arizona limited liability company

By: Quynh Palomino  
Name: QUYNH PALOMINO  
Its: MANAGER

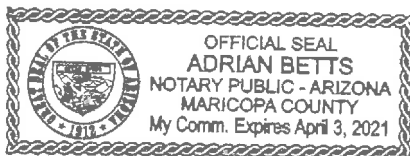
VIRTUA BENNETT ESTATES OWNER 2,  
LLC, an Arizona limited liability company

By: Quynh Palomino  
Name: QUYNH PALOMINO  
Its: MANAGER

STATE OF ARIZONA       )  
                                          )ss.  
County of Maricopa       )

10<sup>TH</sup> This Drainage and Access Easement Agreement was acknowledged before me on this  
day of FEBRUARY, 2021, by QUYNH PALOMINO, the Manager of  
Virtua Bennett Estates Owner, LLC, an Arizona limited liability company, for and on behalf  
thereof.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

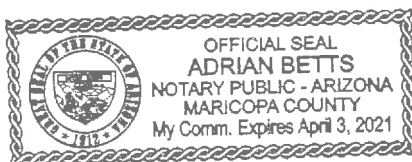


Adrian Betts  
Notary Public

STATE OF ARIZONA       )  
                                          )ss.  
County of Maricopa       )

10<sup>TH</sup> This Drainage and Access Easement Agreement was acknowledged before me on this  
day of FEBRUARY, 2021, by QUYNH PALOMINO, the Manager of  
Virtua Bennett Estates Owner 2, LLC, an Arizona limited liability company, for and on behalf  
thereof.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Adrian Betts  
Notary Public

[Signatures, Acknowledgments and Exhibits on Following Pages]

**CITY:**

CITY OF GOODYEAR,  
an Arizona municipal corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ARIZONA        )  
                                      )ss.  
County of Maricopa        )

      This Drainage and Access Easement Agreement was acknowledged before me on this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, of the City of  
Goodyear, an Arizona municipal corporation for and on behalf of thereof.

      IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

ATTEST

\_\_\_\_\_  
Darcie McCracken  
City Clerk

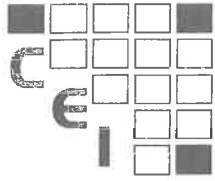
APPROVED AS TO FORM

\_\_\_\_\_  
Roric Massey  
City Attorney

*[Exhibits on Following Pages]*

**EXHIBIT A**

**VIRTUA PARCEL**



# Clouse Engineering, Inc.

## ENGINEERS • SURVEYORS

5010 E. Shea Blvd. Ste. 110 • Scottsdale, Arizona 85254 • TEL (602) 395-9300 • FAX (602) 395-9310

Job No. 180514  
October 30, 2018  
Rev: November 18, 2020

### Legal Description For Bennett Meadows

A portion of the Northeast quarter of Section 12, Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Northeast corner of said Section 12;

Thence South 00 degrees 13 minutes 15 seconds West, along the East line of the Northeast quarter of said Section 12, a distance of 1653.76 feet to the South line of "Legacy Ranch", as recorded in Book 773 of Maps, Page 17, records of Maricopa County, Arizona and the **Point of Beginning**;

Thence continuing South 00 degrees 13 minutes 15 seconds West, along said East line of the Northeast quarter of Section 12, a distance of 233.53 feet;

Thence North 89 degrees 46 minutes 45 seconds West a distance of 267.00 feet;

Thence South 00 degrees 13 minutes 15 seconds West a distance of 200.00 feet;

Thence South 89 degrees 46 minutes 45 seconds East a distance of 267.00 feet to a point on said East line of the Northeast quarter of Section 12;

Thence South 00 degrees 13 minutes 15 seconds West, along said East line, a distance of 559.00 feet to the East quarter corner of said Section 12, Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

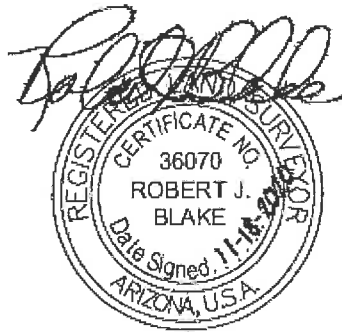
Legal Description  
Job No. 180514  
Bennett Meadows Plat  
October 30, 2018  
Rev: November 18, 2020  
Page 2

Thence along the South line of said Northeast quarter of Section 12, North 89 degrees 45 minutes 27 seconds West a distance of 1320.26 feet to a point on the Easterly line of "Canyon Trails Unit 3 Parcel F", as recorded in Book 687 of Maps, Page 40, records of Maricopa County, Arizona;

Thence along said Easterly line, North 00 degrees 14 minutes 10 seconds East a distance of 992.54 feet to a point on the Southerly line of "Legacy Ranch", as recorded in Book 773 of Maps, Page 17, records of Maricopa County, Arizona;

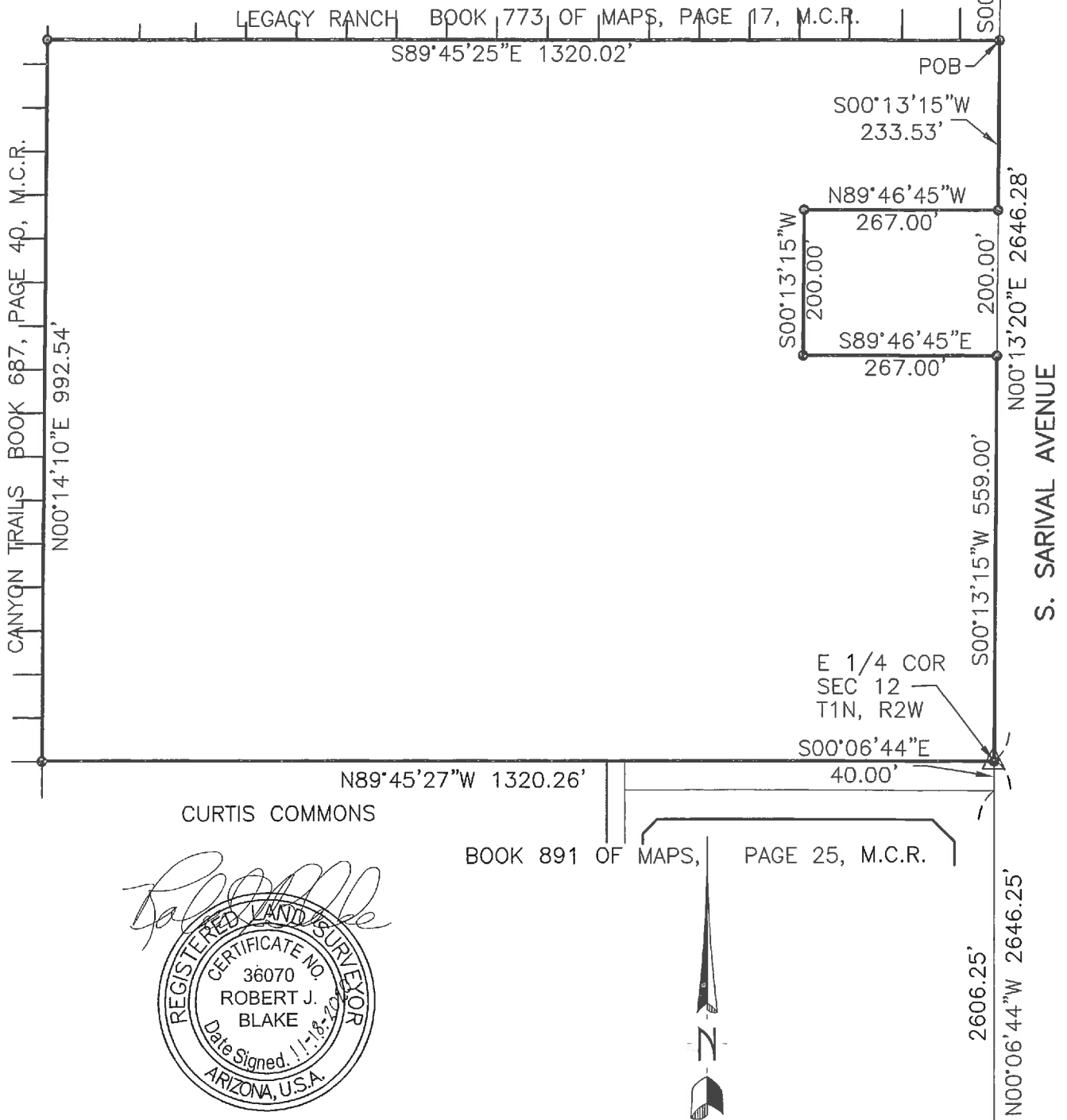
Thence along said Southerly line, South 89 degrees 45 minutes 25 seconds East a distance of 1320.02 feet to the **Point of Beginning**.

Note: The above described parcel contains 1,256,874 square feet or 28.8539 acres, more or less.



# BENNETT MEADOWS

NE COR  
SEC 12  
T1N, R2W

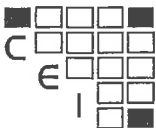


**Clouse Engineering, Inc.**

ENGINEERS ■ SURVEYORS  
5010 E. Shea Blvd Suite 110 Scottsdale, AZ. 85254  
Tel 602-395-9300 Fax 602-395-9310

1"=200'  
JOB #180514  
11/18/2020

SE COR  
SEC 12  
T1N, R2W



**EXHIBIT B**

**DRAINAGE BASIN PARCEL**

A portion of the Southeast quarter of Section 12, Township 1 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Tract A, of CURTIS COMMONS, a subdivision as recorded in Book 891 of Maps, Page 25, records of Maricopa County, Arizona.