

**AGREEMENT AND LICENSE  
FOR ACCESS, INGRESS, EGRESS AND PARKING**

**THIS AGREEMENT AND LICENSE FOR ACCESS, INGRESS, EGRESS AND PARKING** (the “**Agreement**”) is made and entered into as of this [ ] day of [ ], 2016, by and between: [i] **NEW ALBANY-FLOYD COUNTY CONSOLIDATED SCHOOL CORPORATION**, a local education agency and instrumentality of the State of Indiana having an address of 2813 Grant Line Road, New Albany, Indiana 47150 (“**NAFCS**”); and [ii] **SCHULER BAUER REAL ESTATE SERVICES, INC.**, an Indiana corporation having an address of Suite 200, 4206 Charlestown Road, New Albany, Indiana 47150 (“**SBRES**”).

**RECITALS:**

**A.** NAFCS is the fee simple owner of certain real property having a commonly-known address of 4202 Charlestown Road, New Albany, Indiana 47150, upon which the Charles Allen Prosser School of Technology is operated by NAFCS and upon which the Prosser Education Center is situated, and being designated as the “NAFCS Property” on the drawing prepared by [ ] attached hereto as **Exhibit A** (the “**License Plat**”), being the real property acquired by NAFCS pursuant to a certain Warranty Deed dated June 27, 1966, of record in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Recorder of Floyd County, Indiana (the “**Recorder’s Office**”).

**B.** SBRES is the fee simple owner of certain real property having a commonly-known address of 4206 Charlestown Road, New Albany, Indiana 47150, which is contiguous with the NAFCS Property and is designated as the “SBRES Property” on the License Plat, being the real property acquired by SBRES pursuant to that certain [Warranty Deed] dated [ ], of record in Deed Book [ ], Page [ ], in the Recorder’s Office (the NAFCS Property and the SBRES Property are sometimes collectively referred to herein as the “**Property**”).

**C.** SBRES desires to construct upon the NAFCS Property, at the sole cost and expense of SBRES, a certain parking lot in accordance with such plans and in such location as are mutually agreeable to NAFCS and SBRES (the “**Parking Lot**”), for the mutual use and benefit of NAFCS and SBRES as more particular set forth in this Agreement.

**D.** NAFCS and SBRES each desire to enter into this Agreement to evidence their intent that, following construction of the Parking Lot, SBRES and its tenants and invitees as described below, shall have certain rights of access, ingress and egress to and from the NAFCS Property, and parking over, across and on the NAFCS Property, all as more particularly set forth below.

**NOW THEREFORE**, in consideration of the premises and the mutual and dependent covenants, terms, conditions and restrictions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby grant, declare, covenant and agree as follows:

**1. Grant of License and Revocable Right-to-Use.**

**A.** In consideration of SBRES constructing the Parting Lot in the manner hereinafter described and performing its other obligations relating thereto and as otherwise set forth herein, NAFCS hereby grants and conveys unto SBRES, its tenants

and invitees, to and for the benefit of the SBRES Property, a non-exclusive, limited and revocable license and right-to-use, and reasonable restricted access for ingress and egress as a passageway for vehicular and pedestrian traffic to and from the SBRES Property, and for customer parking, all only in connection with the business operated from time-to-time on the SBRES Property, such rights to be enjoyed in common with NAFCS, its tenants, visitors and invitees and others properly having the right to utilize the NAFCS Property, over, across and upon such portion of the NAFCS Property as may be paved and designated by NAFCS for ingress and egress and use as the Parking Lot, as the same may now exist or may hereafter be altered or modified by NAFCS from time-to-time (the “**NAFCS License**”). The NAFCS License shall be for the limited purpose of accessing the SBRES Property for the conduct of business thereat and shall in no event include rights or parking for delivery or truck parking, employee parking, or overnight parking or storage, or similar parking purposes, and the rights granted for the benefit of the SBRES Property are expressly limited to the matters set forth herein and may not be expanded without the prior written consent of NAFCS or the owner of the NAFCS Property.

**B.** NAFCS expressly reserves and retains for itself and any successors or assigns of NAFCS all rights to make use of the surface of the NAFCS Property and the Parking Lot. Without limiting the forgoing, SBRES expressly acknowledges and agrees that NAFCS has reserved the right to use the Parking Lot, without compensation or payment of any kind. NAFCS shall have the right to grant any easements, licenses or other rights of use on, over and through the NAFCS Property and/or the Parking Lot for such purposes as NAFCS determines.

**2. Existing Drive.** SBRES and NAFCS hereby acknowledge that there is an existing access, curb-cut and paved drive area across that portion of the NAFCS Property from Charlestown Road to the West boundary line of the NAFCS Property as depicted on **Exhibit B** attached hereto (the “**Existing Drive**”). NAFCS hereby grants and conveys unto SBRES, its tenants and invitees, to and for the benefit of the SBRES Property, a non-exclusive license and right-of-way over, across and upon the Existing Drive for reasonable access, ingress and egress for vehicular and pedestrian traffic to and from the SBRES Property and the Parking Lot.

**3. Reciprocal Non-Exclusive License for Access Openings.** The openings and access points contemplated from the NAFCS Property and the SBRES Property, as applicable, and Charlestown Road (i.e., so-called curb cuts) and between the NAFCS Property and the SBRES Property for the use of the Existing Drive and the NAFCS License described herein are collectively referred to herein as the “**Access Openings**”. The Access Openings are shown at those locations as are depicted on **Exhibit A**. Each of NAFCS and SBRES hereby grants and conveys to the other, and their respective tenants and invitees, and all of their respective agents, officers, employees, invitees, successors and assigns, to or for the benefit of the NAFCS Property and the SBRES Property, as applicable, a non-exclusive reciprocal license and right-of-use for reasonable access, ingress and egress through the Access Openings located on that portion of the Property owned by such granting party. The Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as contemplated by the License Plat. There shall be maintained between the Access Openings a smooth and level grade transition to allow the use of the Existing Drive for the vehicular and pedestrian traffic to the entire Property as contemplated by this Agreement. SBRES shall be responsible for the cost of the initial construction or alteration of the road, curbs, traffic islands, stairs, steps, landscaping and related improvements constituting the Access Openings. The cost of the maintenance and repair of the Access Openings following

the initial construction shall be shared by the parties in the same manner as the maintenance and repair of the Existing Drive pursuant to the terms and conditions of Section 6 below.

**4. Construction of Parking Lot.**

**A.** NAFCS acknowledges that SBRES intends to construct, at the sole cost and expense of SBRES, certain improvements on the NAFCS Property which will comprise the Parking Lot having not less than *[twelve (12) parking]* spaces, including grading, fill and compaction of soil, installation of necessary retaining and supporting walls, bracings and structures, laying asphalt, and constructing stairs and bridges and other related improvements. SBRES shall submit to NAFCS, for review and approval by NAFCS in its sole discretion, a detailed plan showing the proposed design, architectural and construction plans and schematics, and the location of the Parking Lot and all such related improvements to be constructed upon the NAFCS Property and otherwise with respect thereto. SBRES agrees to work with such engineers, architects, contractors, consultants and other persons designated by NAFCS, or which are otherwise acceptable to NAFCS, to address any questions, concerns or objections that NAFCS may have regarding the proposed construction of the Parking Lot and NAFCS shall have the right (but not the obligation) to supervise all work performed, services rendered, and materials furnished in connection with the construction thereof. The Parking Lot and all such related improvements shall be: [i] constructed in a manner reasonably acceptable to NAFCS and otherwise in a good and workmanlike manner and in accordance with all applicable building laws and codes; [ii] installed in a location upon the NAFCS Property across such routes or areas as are designated by NAFCS and which otherwise minimizes the impact on the NAFCS Property; [iii] installed in a manner such that the work is performed, and the operation thereof shall occur, as practically as feasible, in a minimally invasive or disruptive manner; and [iv] performed in reasonable cooperation with NAFCS and at times designed to create the least amount of disruption to NAFCS and the Prosser Education Center. SBRES shall: [i] promptly pay the entire cost of all work performed, services rendered, and materials finished in connection with the initial construction of the Parking Lot, and all costs attributable to any alterations and subsequent improvements (including without limitation all permit, license and connection fees (if any) and fees payable to third-parties); [ii] indemnify NAFCS against [a] any costs or expenses which may be incurred as a result thereof, and [b] any costs or expenses which may be incurred as a result of building code violations attributable to such work; [iii] promptly repair any damage to any portion of the NAFCS Property or any of the other NAFCS Property caused by any such construction and activities.

**B.** NAFCS hereby grants to SBRES a non-exclusive limited ground and aerial temporary right-of-access, right-of-entry and right-of-use and for ingress and egress through the NAFCS Property for the limited purpose of: [i] constructing, installing, repairing, reconstruction, rebuilding, generally maintaining, or replacing the Parking Lot; and [ii] painting, inspecting, testing, repairing, resurfacing, replacing, and cleaning the Parking Lot and any improvements relating thereto. The rights granted to SBRES in this Section 4.B shall be temporary in nature and the use of the NAFCS Property in connection therewith shall be limited in duration in each instance, and shall be utilized only for such period and only to such limited extent as is reasonably necessary in order to complete the activity for which the temporary use is claimed. The exercise of the rights of SBRES as set forth herein are subject to the prior approval of NAFCS in each instance, which such approval shall not be unreasonably withheld or delayed.

**5. Nature of Grant; Automatic Termination; Right of Termination by NAFCS.**

The rights and privileges granted hereunder shall be enjoyed on a limited, non-exclusive basis only as expressly set forth above on a “*first-come, first-served, as-available*” basis at such times as the Parking Lot is not otherwise being used by NAFCS, or others having business with NAFCS, and otherwise in common with other users and the public generally, and those conducting business at the Property. NAFCS hereby expressly reserves the right to adopt, and thereafter modify from time-to-time, such reasonable rules regarding the use of and access to the NAFCS Property (including without limitation the use of the Existing Drive, the Access Openings and the Parking Lot) as it determines to be appropriate in its sole discretion. SBRES hereby recognizes, acknowledges and agrees that: [i] this Agreement and the privileges granted to SBRES hereunder are expressly contingent upon SBRES completing construction of the Parking Lot in accordance with plans and specifications approved by NAFCS no later than [\_\_\_\_\_] (the “**Outside Completion Date**”); [ii] if the construction of the Parking Lot is not so completed by the Outside Completion Date, this Agreement shall automatically terminate without any action by either party and shall thereupon become null and void and of no further force or effect; and [iii] neither SBRES nor any person utilizing the NAFCS Property as set forth herein shall have any right to place any signs, advertising or endorsements of any kind or nature upon or around the NAFCS Property without the prior written consent of NAFCS, or to otherwise utilize, access, disturb or otherwise impede any other portion of the NAFCS Property which is not included as a part of the Existing Drive, the Access Openings or the Parking Lot. Upon not less than ninety (90) days prior written notice provided to SBRES at any time **[after [\_\_\_\_\_] ]**, NAFCS may freely terminate this Agreement and the rights, licenses and privileges granted to SBRES herein, or otherwise discontinue or modify the granted use and the activities conducted upon the NAFCS Property hereunder, or sell or otherwise dispose of the NAFCS Property, without payment of any kind or nature to SBRES, whenever the governing board of NAFCS determines in its sole and absolute discretion that it is in the best interests of NAFCS that the property comprising the Parking Lot should be used for another purpose. The foregoing right of termination in favor of NAFCS is a material term and condition upon which NAFCS has relied as an inducement to enter into this Agreement.

**6. Maintenance Covenants.** Following the construction of the Parking Lot and the related improvements, each of NAFCS and SBRES agree to keep their respective portion of the Property in good condition and repair, including without limitation maintaining and repairing all sidewalks and the surfaces of the parking, drive and roadway areas, removing all papers, debris and other refuse from and periodically sweeping all parking, drive and road areas to the extent necessary to maintain the same in a neat, clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and drives, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, maintaining signage in good condition and repair. In addition, each of NAFCS and SBRES agree to jointly maintain and equally bear the cost and expense of maintaining the Existing Drive, the Access Openings and the Parking Lot in good condition and repair and for arranging for snow removal and other related maintenance and repairs. The Existing Drive, the Access Openings and the Parking Lot shall be maintained in a good and passable condition under all traffic and weather conditions and shall be kept open for fire-fighting equipment and other emergency vehicles. Any repairs or maintenance which a party deems necessary may be undertaken only with the consent of both parties and a written agreement by each party to bear and pay one-half (1/2) of the cost of such repairs or maintenance. If one party believes that any such repairs or maintenance are necessary, but the other party does not agree to assume its share of the cost relating thereto, the party desiring to make the same shall have the free and unrestricted right to do so at its sole cost and expense and without the other party being required to reimburse such requesting party for its share; provided, however, that no such repair or maintenance activities shall impede or

interfere with the other parties use and occupancy of its respective portion of the Property. Notwithstanding the foregoing, SBRES agrees to pay as and when due (and before any penalty or increase will accrue for the non-payment thereof) the entire amount of any costs due as a result of the construction of the Parking Lot (including any storm sewer, water drainage and similar fees and costs).

**7. Indemnity.** SBRES (and such other owners of the SBRES Property) shall protect, indemnify and save NAFCS wholly harmless from and against any and all losses, liabilities, obligations, claims, damages, judgments, costs, expenses (including without limitation reasonable attorneys' fees) and actions or proceedings asserted against NAFCS and arising from or in connection with the occurrence or existence of any of the following during the term of this Agreement: [i] the use, occupancy, management, control or operation of the any portion of the NAFCS Property by SBRES, its invitees, agents, servants, employees, contractors and others utilizing the Existing Drive, the Access Openings or the Parking Lot, or otherwise accessing the NAFCS Property thereby or therefrom (collectively referred to herein as the "**SBRES Invitees**"); [ii] any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the NAFCS Property or any part thereof; [iii] performance of any labor or services or the furnishing of any materials or other property in respect of the Existing Drive, the Access Openings or the Parking Lot; [iv] any failure of SBRES to perform or comply with any of the terms of this Agreement; or [v] any negligent, tortuous or willful act or omission of SBRES or of any SBRES Invitees. SBRES, for itself and on behalf of all of SBRES Invitees, accepts permission to enter upon the NAFCS Property and utilize the Existing Drive, the Access Openings and the Parking Lot on an "**AS IS, WHERE IS, WITH ALL FAULTS**" basis. NAFCS makes no representation or warranty with respect to title to the NAFCS Property, the location or contents of any encumbrances or underground pipes, tanks, electric power lines, or other structures, improvements, faults, defects, obstacles or hazards on, over or beneath the NAFCS Property or the conditions thereof, whether man-made or natural, nor does NAFCS in any way warrant or represent that the NAFCS Property is in any way safe as to either latent or patent defects. NAFCS shall not be liable to any person or entity entering the NAFCS Property pursuant to this Agreement for any claim, expense or liability, including without limitation claims of personal injury including death, or property damage arising from or in any way relating to any entry or access to the NAFCS Property under this Agreement or to any activities undertaken on the NAFCS Property pursuant thereto, except to the extent that such claim, expense or liability arises from the willful misconduct of NAFCS.

**8. Insurance Coverages.** SBRES shall maintain (or shall cause to be maintained) for the benefit of itself and NAFCS (as Additional Insured and Loss-Payee) the following insurance with respect to the use of the NAFCS Property, the Existing Drive, the Access Openings and the Parking Lot: [i] "property insurance" insuring against standard perils (e.g., loss or damage by earthquake, fire or other casualty) in an amount not less than the total value of any improvements that it constructs upon the NAFCS Property as provided herein, all in such form and amounts, and with such coverages, as are determined to be reasonably acceptable to NAFCS; and [ii] general public liability insurance insuring against all claims, demands or actions for injury to (or death of) any one person or for injury to (or death of) more than one person in any one occurrence (including damage to property) in an aggregate amount of not less than *[\$1,000,000.00]*, in each instance combined single-limit, for bodily injury (or death)/property damage or arising from, relating to, or connected with the conduct and operation by SBRES and any SBRES Invitees utilizing the Existing Drive, the Access Openings or the Parking Lot on the NAFCS Property. The costs of maintaining the insurance required hereunder, and any deductibles payable as a result of any claims asserted with respect thereto, shall be borne by SBRES. Such coverage provided by such policies shall be subject to such standard exclusions

as NAFCS reasonably determines to be appropriate. Such insurance shall waive, to the extent possible, any right of subrogation against NAFCS (except for specified instances), and shall require not less than thirty (30) days prior written notice by the insurance company to each party of termination of such insurance coverage. SBRES shall furnish to NAFCS, other third-parties as appropriate, reasonable evidence that such insurance is in full force and effect and each such policy of insurance shall expressly provide for thirty (30) days prior notice prior to any cancellation or modification of the coverage afforded thereby. Upon request made no more than one (1) time during each calendar year, SBRES shall further furnish to NAFCS, in addition to other third-parties as appropriate, with the insurance carrier's certificate of insurance which evidences that the insurance coverages required to be maintained by SBRES pursuant to the terms of this Agreement are in effect. SBRES hereby waives and releases NAFCS from and against any and all claims, demands, liabilities, or obligations whatsoever for loss or damage to property, and for loss of rents or profits, which arise or may arise in its favor and against NAFCS, which loss or damage is coverable by valid and collectible fire and extended coverage, general liability, or worker's compensation insurance policies. Inasmuch as the above waiver will preclude the assignment of any aforesaid claim by way of subrogation (or otherwise) to an insurance company (or any other person), SBRES agrees to: [i] give to each insurance carrier which has issued the policies of insurance required to be maintained by it as set forth in this Agreement, written notice of the terms of said waiver; and [ii] have said insurance policies properly endorsed, if necessary, to prevent the invalidation of said insurance coverages by reason of said waiver. The all-risk policies required to be carried by the parties shall contain a provision whereby the respective carriers shall waive all rights or recovery by way of subrogation, as applicable, to the extent of any insurance proceeds.

**9. Liens; Encumbrances.** SBRES shall not permit to be created or to remain undischarged any lien, encumbrance or charge arising out of any work of any contractor, mechanic, laborer or materialman which might be or become a lien, encumbrance or charge upon the NAFCS Property or any other property owned by NAFCS or any part thereof, or suffer or allow any other matter or thing whereby the estate, rights or interest of NAFCS in the NAFCS Property or any part thereof might be impaired (a "**Lien**"). Within fifteen (15) days following a request by NAFCS, SBRES shall cause any such Lien to be discharged and removed of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If SBRES fails to cause any such Lien or notice of lien to be discharged or released within the foregoing 15-day period, NAFCS may, but shall not be obligated to, discharge the same by deposit or by bonding proceedings. Any amounts so paid by NAFCS (and all related costs and expenses) shall be payable by SBRES to NAFCS promptly following demand therefor by NAFCS.

**10. Miscellaneous.**

**A.** The NAFCS License and rights hereinabove granted shall be used and enjoyed only in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of the owner or occupant of the burdened property.

**B.** Neither NAFCS nor SBRES, nor any owner of the NAFCS Property or the SBRES Property, respectively, will construct any structure within the Existing Drive, the Access Openings or the Parking Lot or otherwise impede access, ingress and egress across the same for the enjoyment thereof as contemplated by this Agreement. Except as provided with respect to the termination right in favor of NAFCS provided herein, NAFCS and SBRES shall not take any action which would materially and adversely

affect the other party's access, right to use and enjoy, or availability of, the Existing Drive, the Access Openings or the Parking Lot.

**C.** NAFCS and SBRES expressly reserve the right to modify or terminate the provisions of this Agreement in their sole discretion; provided, however, this Agreement may only be so modified or terminated by a written document entered into and executed by both parties hereto, including their respective successors and assigns, and recorded in the Recorder's Office. If NAFCS exercises its right to terminate this Agreement in its sole discretion as provided herein, NAFCS shall have the unilateral right to record a termination of this Agreement in the Recorder's Office without the joinder or acknowledgement of SBRES.

**D.** No delay or omission by either party in the exercise of any right or power accruing upon any non-compliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants, conditions or agreements to be performed by the other party shall not be construed to be a waiver of any succeeding breach thereof or of any other covenants, conditions or agreements contained herein.

**E.** Either party to this Agreement may, either at law or in equity, by suit, action, injunction, or other proceedings, enforce and compel performance of this Agreement by the other party.

**F.** Nothing contained in this Agreement, nor any acts of the parties, shall be deemed or construed to create a relationship of principal and agent, partnership, joint venture, or any other association between the parties, or to render either liable for any of the debts or obligations of the other party.

**G.** Nothing contained in this Agreement shall be construed as creating any rights in the general public or as dedicating for public use any portion of the NAFCS Property or the SBRES Property.

**H.** If any term, provision or condition contained in this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition that is not invalid or unenforceable, shall not be affected thereby, and each term, provision and condition shall be valid and enforceable to the fullest extent permitted by law.

**I.** SBRES shall have no right to assign this Agreement or otherwise delegate any of its duties, obligations and liabilities hereunder. This Agreement shall be binding upon, and shall inure to the benefit of, NAFCS and SBRES and their respective successors and permitted assigns.

**J.** Either party shall have the right to record this Agreement in the Recorder's Office. Recording costs will be at the expense of the requesting party.

**K.** Any notice required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been sufficiently given if sent certified mail, return receipt requested, postage prepaid, or personally delivered, to the address for the receiving party first set forth above or to such other address as the receiving party

may have designated in written notice to the sending party, sent in accordance with this Section 10.K.

L. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Indiana in all respects.

**IN TESTIMONY WHEREOF**, witness the signatures of the parties to this Agreement as of the date first written above.

**“NAFCS”**

NEW ALBANY-FLOYD COUNTY CONSOLIDATED SCHOOL CORPORATION, a local education agency and instrumentality of the State of Indiana

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“SBRES”**

SCHULER BAUER REAL ESTATE SERVICES, INC., an Indiana corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF INDIANA )  
 ) SS:  
COUNTY OF FLOYD )

The foregoing instrument was subscribed, sworn to and acknowledged before me this [ ] day of [ ], 2016, by \_\_\_\_\_, as \_\_\_\_\_ of **NEW ALBANY-FLOYD COUNTY CONSOLIDATED SCHOOL CORPORATION**, a local education agency and instrumentality of the State of Indiana, on behalf of such agency and instrumentality.

Notary Public: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My County of Residence: \_\_\_\_\_

**[AFFIX NOTARIAL SEAL]**



STATE OF INDIANA )  
 ) SS:  
COUNTY OF FLOYD )

The foregoing instrument was subscribed, sworn to and acknowledged before me this [ ] day of [ ], 2016, by \_\_\_\_\_, as \_\_\_\_\_ of **SCHULER BAUER REAL ESTATE SERVICES, INC.**, an Indiana corporation, on behalf of such corporation.

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

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

**[AFFIX NOTARIAL SEAL]**

My Commission Expires: \_\_\_\_\_

My County of Residence: \_\_\_\_\_

A title search was not conducted by the undersigned. I, the undersigned, affirm, under penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document unless required by law. Jeffrey E. Wallace, Esq., of Wyatt, Tarrant & Combs, LLP.

**THIS INSTRUMENT PREPARED BY:**

Jeffrey E. Wallace, Esq.  
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P.O. Box 649  
New Albany, Indiana 47151-0649  
(812) 945-3561

61555253.1

**EXHIBIT A**

(License Plat and Depiction of Access Openings)

**EXHIBIT B**

(Depiction of Existing Drive)