GLASSBORO PUBLIC SCHOOLS GLASSBORO, NEW JERSEY

TO:

Mark Silverstein

FROM:

Scott Henry

DATE:

June 2, 2017

RE:

Agenda Item - ARFA Access Agreement - Glassboro Intermediate School

Recommend the Board approve the attached Access Agreement with ARFA Enterprises to allow access to the Glassboro Intermediate School property in order to perform groundwater testing relating to soil contamination. There is gasoline contamination in the soil on the Intermediate School site from 2 gas stations formerly located on Delsea drive. This agreement will allow the former owner access to the Intermediate School to drill and monitor test wells. Agreement has

been reviewed by legal counsel.



REVINIM KINSELLA, ESO KKINSELLA&DECOTIISLAW COM 201 907 5229

May 24, 2017

VIA Regular Mail

Scott D. Henry School Business Administrator/Board Secretary Glassboro Public Schools 560 Joseph Bowe Boulevard Glassboro, New Jersey 08028

MAY 3 1 2017

Re: ARFA Access Agreement
Glassboro Intermediate School

Dear Mr. Henry:

As you will recall, the New Jersey Department of Environmental Protection ("NJDEP") has identified ARFA Oil Enterprises Inc. ("ARFA"), and its property located at 201 Delsea Drive ("ARFA Property"), as a source of groundwater contamination (gasoline constituents) beneath the Glassboro Intermediate School ("GIS"). On or about January 23, 2014, the NJDEP issued a letter to ARFA instructing it to conduct remedial measures to prevent continued impacts to groundwater at the GIS. In furtherance thereof, ARFA's Licensed Site Remediation Professional ("LSRP") requested that the Glassboro Board of Education ("GBOE") grant access to the GIS in order to allow the LSRP to undertake necessary delineation work. In response, I forwarded a form of Access Agreement to govern ARFA's activities on the GIS property. Attached hereto, is a partially-executed original of that Access Agreement, signed by ARFA. At your earliest convenience, please have the GBOE President execute the same and return the original, fully-executed, agreement to my attention, at which time I will disseminate a copy to ARFA.





If you have any questions, please do not hesitate to contact me. Thank you for your assistance.

Very truly yours,

DeCotiis, FitzPatrick, Cole & Giblin, LLP

ly:_____

cc. C. Dudley Warner, III (via e-mail only)
William Harla (via e-mail only)

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (the "Agreement") is made as of this ____ day of _____, 2017, by and between the Glassboro Board of Education, with offices located at 560 Joseph Bowe Memorial Boulevard, Glassboro, New Jersey 08028 (hereinafter, "Licensor"), and ARFA Oil Enterprises Inc., with offices located at 4350 Haddonfield Road, Suite 200, Pennsauken, New Jersey 08109 (hereinafter, "Licensee").

RECITALS:

WHEREAS, Licensor owns certain real property located at 202 N. Delsea Drive in Glassboro, New Jersey (the "Property"); and

WHEREAS, Licensor operates the Glassboro Intermediate School ("GIS") on the Property; and

WHEREAS, Licensee owns certain real property located at 201 N. Delsea Drive in Glassboro, New Jersey ("Licensee's Property"), which is adjacent to the Property; and

WHEREAS, Licensee's Property was the site of a former gasoline service station; and

WHEREAS, gasoline contamination on and under Licensee's Property is being actively remediated by Licensee (PI #004601) with the use of a Licensed Site Remediation Professional ("LSRP"); and

WHEREAS, Licensee, as part of its remedial activities, must investigate the extent of contamination migrating from Licensee's Property onto the Property; and

WHEREAS, Licensee has requested that Licensor provide temporary access to a portion of the Property for the limited purpose of (i) installing and periodically sampling a groundwater monitoring well and (ii) periodically sampling the existing groundwater monitoring wells on the Property; and

WHEREAS, Licensee desires to enter onto the Property consistent with the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and conditioned upon the mutual covenants, promises and agreement stated herein, the parties hereto agree as follows:

Incorporation of Recitals.

The foregoing recitals are hereby incorporated by reference as if fully set forth herein.

2. Grant of License.

Licensor hereby grants a revocable, non-exclusive license (the "License"), for the term of this Agreement to the Licensee, its employees, agents, contractors, subcontractors and consultants (collectively, the "Licensee's Representatives"), to enter onto the Property for the limited purpose of:

- (a) Installing a groundwater monitoring well at the location identified as MW 5 in Exhibit A attached hereto and made a part hereof; and
- (b) Periodically sampling groundwater monitoring well MW5, as well as the existing groundwater monitoring wells on the Property, at such times as are approved in advance in writing by Licensor, which approval shall not unreasonably withheld, conditioned or delayed.

3. <u>Term of License</u>.

- (a) Unless terminated sooner, this Agreement shall commence as of the date hereof (the "Commencement Date") and continue for a term ending with receipt by Licensee's LSRP that the Licensee's remedial investigation activities on the Property have been fully completed in accordance with applicable law. Notwithstanding the foregoing, in no case shall the term of this Agreement exceed three (3) years from the Commencement Date unless an extension has been requested by Licensee in writing at least thirty (30) days prior to expiration of this Agreement, and granted by Licensor in writing.
- (b) If, after notice from Licensor that a default under Section 15. of this Agreement has occurred and such default has not been cured by Licensee within the applicable cure period, the License granted hereby may be terminated, without prejudice to any other right or remedy that Licensor may have under this Agreement or at law or in equity.

4. <u>Limitations on Access.</u>

Licensee acknowledges and agrees that:

(a) The Property is the site of a school and, as such, Licensee must conduct all activities authorized by this Agreement in a manner and during such times

- that will have the least impact on the GIS, its students and faculty. Accordingly, all activities authorized herein shall be conducted outside of normal school hours, which are Monday through Friday, 8:00 AM to 4:00 PM.
- (b) Notwithstanding anything contained in this Agreement to the contrary, Licensee shall conduct its authorized activities on that portion of the Property which falls outside of the boundaries of any GIS facilities, including, but not limited to any designated play areas.
- Groundwater monitoring well MW5 installed by Licensee on the Property shall be deemed to be the exclusive property of Licensee and Licensee shall be solely responsible for any repair, maintenance, and any damage to the monitoring wells. Further, Licensee shall be solely responsible for the security of said monitoring well, including but not limited to, installation of a cap which is capable of locking over the opening of the monitoring well. Licensee shall ensure that said cap is locked at the end of each work day.
- (d) After the testing authorized by this Agreement has been completed, or upon termination of this Agreement pursuant to Section 3., monitoring well MW5 shall be properly closed by Licensee at its sole cost and expense, in accordance with applicable law.
- (e) Any portion of the Property which is disturbed as a result of Licensee's authorized activities shall be restored by Licensee, at its sole cost and expense, to as close to its original condition prior to commencement of said activities as is possible under the circumstances. Said restoration work shall expressly include replacement of any damaged or destroyed landscaping and the replacement or reimbursement for any damaged or destroyed equipment. In the event that Licensee fails to restore the Property as required by this Section 4., Licensor shall have the right, but not the obligation, to notify Licensee of Licensor's intent to complete the restoration and, if Licensee fails to undertake restoration within twenty (20) days of receipt of such notice from Licensor, Licensor may complete such restoration and Licensee shall promptly, upon receipt of a reasonably satisfactory invoice therefor, reimburse Licensor for all reasonable restoration costs.
- Licensee shall be solely responsible for identifying any and all subsurface utilities, equipment or structures below the Property or otherwise potentially affecting Licensee's activities. Licensor shall, however, provide Licensee with any information in its possession, custody or control relating to the presence of these subsurface systems. Licensee and/or Licensee's Representatives agree to immediately notify Licensor of any interference with or damage to subsurface systems, or any other real and/or personal property occasioned by Licensee's and/or Licensee's Representatives' entry on or use of the Property.

- (g) At least three (3) business days prior to each entry onto the Property, Licensee shall provide advance written notice, via hand delivery or overnight mail, to Licensor. Any such written notice shall specify the date and approximate time of entry, the name of person(s) who will be on the Property and their affiliation, the activities which will take place on the Property, as well as the anticipated length of time access will be necessary. Unless notified by Licensor to the contrary, prior to the date of such entry, the access requested in the notice shall be deemed permitted.
- (h) Licensee shall undertake the activities authorized by this Agreement in a safe and workmanlike manner, in accordance with all applicable laws, regulations and highest professional industry standards, and so as not to impact Licensor's use of the Property as an educational facility.
- (i) Licensee and/or Licensee's Representatives shall not, during the course of performing the activities permitted by this Agreement, cause or contribute to any environmental contamination on the Property.
- (j) In the event that further investigatory or remedial activities are dictated by the groundwater monitoring program conducted by Licensee on the Property, Licensor will review the terms and conditions of such additional activities and may, but is under no obligation, to enter into an amended or separate access agreement. However, the foregoing shall not be a waiver of any rights of access available to Licensee pursuant to applicable law.

5. Storage and Disposal.

Except in connection with the installation of groundwater monitoring well MW5 on the Property, which will require Licensee's Representatives to have drilling equipment on the Property overnight for up to three (3) days, and except as otherwise consented to by Licensor, Licensee and/or Licensee's Representatives agree to leave the Property at the end of each work day as close to original condition as is possible under the circumstances. Licensee and/or Licensee's Representatives shall not erect any structure upon the Property nor store any machinery, equipment or waste (i.e., purged water, rinsings, soil, etc.) on the Property, except as set forth above. Licensee shall be considered the "operator," "owner" and "generator" of all wastes generated on the Property during the course of conducting the activities authorized by this Agreement and shall, at its sole cost and expense, be responsible for promptly disposing of any wastes generated in connection with said activities and shall, upon request, provide Licensor with appropriate documentation evidencing the lawful and proper disposal of any such wastes.

6. <u>Hazardous Waste</u>.

Except as necessary in connection with their activities pursuant to this Agreement, Licensee and/or Licensee's Representatives shall not transmit, store, handle or dump toxic or hazardous wastes, or hazardous substances, anywhere within the Property, nor shall Licensee and/or Licensee's Representatives violate any land use law as such may apply to the Property.

7. Right to Accompany; Split Samples.

Licensor reserves the right to accompany (and/or have its designated representatives accompany) Licensee and/or Licensee's Representatives during the conduct of authorized activities at the Property. Upon notification by Licensor, Licensee shall cooperate with, and shall cause Licensee's Representatives to cooperate with, Licensor to facilitate Licensor's obtaining split samples of any ground water samples taken from the Property, which Licensor shall have the right to analyze at Licensor's expense.

8. License Fees.

As compensation to Licensor for its out of pocket administrative, legal and other costs and expenses incurred in connection with this Agreement, and the exercise by the Licensee of the rights granted hereunder, the Licensee agrees to pay to the Licensor the following fees:

- (a) Within fifteen (15) days after delivery by Licensor to the Licensee of a reasonably satisfactory invoice therefor, Licensee shall pay to Licensor a license fee in the amount of Licensor's out-of-pocket costs in entering into this Agreement, which shall in no event exceed \$2,000.00 in the aggregate.
- (b) Within fifteen (15) days after delivery by Licensor to Licensee of a reasonably satisfactory invoice therefore, Licensee shall pay to Licensor an additional fee in connection with each sampling event at the Property under this Agreement the amount of Licensor's out-of-pocket cost in retaining an environmental consultant to observe the sampling event, which shall not exceed \$200.00 per entry notice.

Any license fee not paid when due, shall bear interest at 18% per annum from the date due until such amount is paid. The obligation to pay any outstanding fees shall survive the expiration or earlier termination of this Agreement.

9. Delivery of Results.

Licensee shall deliver to Licensor all laboratory results of the monitoring authorized by this Agreement within thirty (30) days from analysis. Concurrently with Licensee's receipt of same, Licensee shall deliver all final reports and data prepared by Licensee's LSRP.

10. Insurance.

Licensee shall not enter or cause any of Licensee's Representatives to enter upon the Property for any purpose until the Licensee has furnished to Licensor, at Licensee's sole cost and expense, proof of insurance maintained by Licensee's Representatives who shall enter upon the Property of the types and in such amounts as follows:

- (a) Commercial General and Excess Llability Insurance in the aggregate amount not less than \$5,000,000.00;
- (b) Worker Compensation and Employer's Liability insurance in the amount required by statute;
- (c) Comprehensive Automobile Liability Insurance in the amount not less than \$1,000,000.00 per occurrence combined single limit;
- (d) Professional Services Liability Insurance in the amount not less than \$1,000,000.00 per occurrence combined single limit;
- (e) Certificates of insurance shall be in a form satisfactory to Licensor, shall name the "Glassboro Board of Education, its governing body, and employees" as an additional insured as to the insurance in subsections (a) and (c) and shall remain in full force and effect for the duration of the Agreement and shall provide for not less than thirty (30) days' written notice by registered or certified mail of the cancellation, non-renewal or change in coverage made by Licensee's Representative and/or the insurance company.

11. Indemnity.

(a) Licensee shall indemnify, defend and hold Licensor, its governing body, employees, agents, contractors, and subcontractors in their capacity as such (collectively referred to in this Section 11. as the "Licensor"), and their successors and assigns harmless from and against any and all claims, charges, costs, damages, enforcement actions, expenses, fines, injuries,

judgments, liabilities, losses, penalties, remedial actions (including, without limitation, any investigation, removal and remedial costs) and expenses (including, without limitation, reasonable attorneys', consultants' and experts' fees and laboratory costs), at law or in equity, of every kind or nature whatsoever, whether direct or indirect, known or unknown (individually or collectively, "Claims") to the extent arising from the negligent acts or omissions or intentional misconduct of Licensee and/or Licensee's Representatives in connection with activities undertaken by Licensee and/or Licensee's Representatives on the Property under this Agreement, except to the extent caused by the negligence or intentional misconduct of Licensor.

- (b) Licensee's liability pursuant to its obligations to defend and indemnify Licensor shall not be limited by the amount of any insurance proceeds that Licensee recovers from any insurance coverage maintained pursuant to this Agreement and, without limitation, shall extend to occurrences for which insurance is not required by this Agreement.
- (c) The parties hereto expressly acknowledge and agree that nothing in this Agreement shall be deemed or construed as a waiver, limitation or relinquishment of any claim by Licensor against Licensee and/or any Licensee Representative with respect to any damage caused to the Property by migration of contamination originating from Licensee's Property, all of which are expressly reserved by Licensor hereby.
- (d) The Indemnity contained in this Section 11. shall survive the expiration or earlier termination of this Agreement.

12. Assignment.

Licensee shall not have the right, power or authority to assign any of its rights hereunder without the prior written consent of Licensor. Any such assignment made without the prior written consent of Licensor shall be null and void and of no force and effect.

13. No Liens.

Licensee shall not permit any lien to be filed against the Property or any improvements thereon for any labor or materials in connection with the activities authorized and undertaken by Licensee or Licensee's Representatives on the Property. In the event that such a lien is filed against the Property or any improvements thereon, Licensor shall have the right, but not the obligation, if Licensee falls to discharge or bond the lien within thirty (30) days of receipt of notice from Licensor, to cause such lien to be released, and Licensee shall reimburse Licensor for all of Licensor's

reasonable costs (including, but not limited to, reasonable attorneys' fees) incurred in connection therewith promptly upon demand by Licensor.

14. Notice.

For purposes of this Agreement, notice shall be considered to be made upon receipt of a document sent by hand delivery, overnight delivery service, first class mail or facsimile.

Notice to Licensor shall be sent to:

Glassboro Board of Education 560 Joseph Bowe Memorial Blvd. Glassboro, New Jersey 08028

Attn: Scott Henry, Business Administrator/Board Secretary

Email:

shenry@glassboroschools.us

Telecopy:

Telephone: (856) 652-2700 (856) 881-0884

with a copy to:

Kevin Kinsella, Esq. DeCotiis, FitzPatrick & Cole, LLP Glenpointe Centre West 500 Frank W. Burr Boulevard Teaneck, New Jersey 07666

Email:

kkinsella@decotiislaw.com

Telephone: (201) 928-1100

Telecopy:

(201) 928-0588

Notice to Licensee shall be sent to:

ARFA Oil Enterprises Inc. 4350 Haddonfield Road, Suite 200 Pennsauken, New Jersey 08109

Attn: Alex Prakhim n

15. Default.

An event of default shall occur under this Agreement upon the occurrence of any of the following:

- (a) The failure of Licensee to pay any fee or any other sums owed under this Agreement within ten (10) business days after the date due.
- (b) An unauthorized assignment of this Agreement by Licensee.
- (c) The failure of Licensee to perform any of its material obligations in accordance with the terms of this Agreement (other than a failure to pay covered by Section 15(a) above), where such failure continues for more than fifteen (15) business days after written notice.
- (d) Upon the occurrence and continuance of a default under this Agreement, Licensor shall have all remedies provided hereunder, at law or in equity, including, without limitation, (1) with respect to monetary defaults, the right to deny access to the Property until such monetary default is cured, and (2) with respect to non-monetary defaults, the right, but not the obligation, to cure such non-monetary defaults. All costs and expenses incurred by Licensor in connection with the exercise of such cure rights shall be due and payable within fifteen (15) business days after submission to Licensee of a reasonably satisfactory invoice therefor.

16. <u>Licensee's Continuing Obligations</u>.

Notwithstanding any termination of the License or this Agreement pursuant to Section 3, or otherwise, Licensee shall not be relieved of its obligation to indemnify Licensor pursuant to Section 11, or to restore the Property in accordance with Section 4.

17. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

18. Severability.

In the event and to the extent that any provision hereunder may be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, then this Agreement shall be read and interpreted as if such provision(s) did not exist and the balance of this Agreement shall remain in full force and effect.

19. Successors and Assigns.

Subject to and without waiver of the provisions in Section 12., all of the rights, duties, benefits, liabilities and obligations of the parties hereto shall inure to the benefit of, and be binding upon, the parties' respective successors and assigns.

20. License Only.

This Agreement creates a License only and Licensee acknowledges that nothing contained in this Agreement nor any act of Licensor or Licensee shall create or be deemed to create an employer/employee, master/servant, principal/agent, joint venture, partnership, landlord/tenant or independent contractor relationship between Licensor and Licensee and/or Licensee's Representatives. Licensee shall be solely and entirely responsible for the supervision, control and direction of all persons performing any portion of the activities authorized under this Agreement.

21. Waiver.

No delay or failure to exercise a right resulting from any breach of this Agreement shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Agreement is breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach so waived and shall not be deemed to waive any other breach under this Agreement.

22. No Recordation.

This Agreement shall not be filed or recorded in any public office.

23. Governing Law.

This Agreement shall be governed by the laws of the State of New Jersey without reference to conflict of laws rules.

24. Amendment

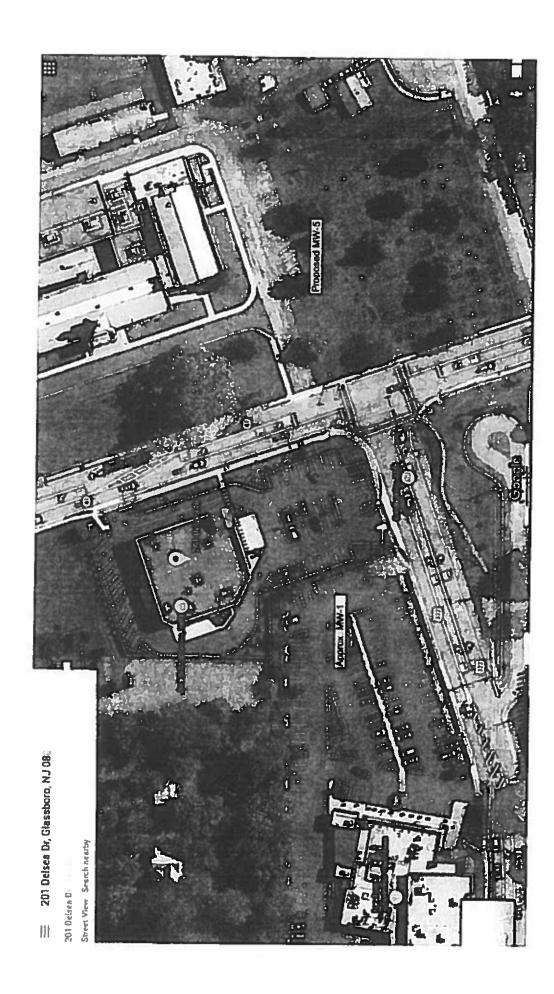
This Agreement shall not be amended, modified or supplemented without prior written agreement signed by an authorized representative of each of the parties. This provision cannot be orally waived.

25. Entire Agreement.

This Agreement contains the entire agreement between the parties concerning its subject matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

ATTEST:	GLASSBORO BOARD OF EDUCATION			
	By:Peter J. Calvo, Board President			
	ARFA OIL ENTERPRISES INC.			
ATTEST:				
MANT	By:			
1/ 0	Alex Prakhim			



RESOREN-02

J2VMYERS

CERTIFICATE OF LIABILITY INSURANCE

DATE MINISTRATO 04/04/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES

BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THEISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER. IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(les) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in fleu of such endorsement(s). इक्ष्मिक्ट Kathleen Dixon PRODUCER AJM Insurance Management PIGHE (AC, No. Esp: AC, No) 1317 Rt 73 Suite 101 kathleend@ajminsurance.com Mount Laurel, NJ 08054 INSURERIS) AFFORDING COVERAGE ROURERA: Liberty International Underwriters INFURED insurence : Alimerica Financial Benefit 41840 Resource Control Consultants LLC neurenc : Riverport Insurance Company P.O. Box 180 MURER D Mooreslown, NJ 08057 INGLINER IF HOUSERF: **COVERAGES** CERTIFICATE NUMBER: THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS REVISION NUMBER PH 기타 TYPE OF INSURANCE POLICY BY POLICY BY POLICY NUMBER LIMITS A X COMMERCIAL CENERAL LIABILITY 2,000,000 EACH OCCURRENCE DANAGE TO RENTED FREMISES HE SCOTTING CLAMS-MADE X OCCUR UVEDE668752117 04/01/2017 | 04/01/2018 500,000 Pollution 10,000 MED EXP (Any one pure 2,000,000 PERSONAL & ADV PLURY CENT AGGREGATE LIMIT APPLIES PER 2,000,000 GENERAL AGGREGATE POLICY PECT LOC 2,000,000 PRODUCTS COMP/OP AGG OTHER AUTOMOBILE LIABILITY HOWED SANGLE LINES 1,000,000 ANY AUTO AWYA895871 04/01/2017 04/01/2018 **BODILY PLAURY (Per person)** AUTOS AUTOS ONLY BOOK Y N. JURY (Per accident)
PROPERTY DAMAGE HIRED ONLY PANSHIN X OCCUR CONTRACTOR AND INC. 8.000.000 EACH OCCURRENCE EXCESS LIAB UMEDE868754117 CLAMSHADE 04/01/2017 04/01/2018 B,000,000 AGGREGATE DED X RETENTIONS C WORKERS COMPENSATION AND EMPLOTERS LIABILITY OTH FIR X STATUTE ANY PROPRETOR PARTNEYE ELCUTIVE OFFICE AMENDED ENGLIDED? Plantingry in Ref. NJARP301261 03/31/2017 03/31/2018 1,000,000 EL, EACH ACCIDENT 1,000,000 EL DISEASE - EA EMPLOYEE 199, distribe under ESCRIPTION OF CHERATIONS below 1,000,000 DISEASE POLICY UNIT Professiona UVEDE668752117 04/01/2017 | 04/01/2018 |Each Loss 2,000,000 DESCRIPTION OF OPERATIONS / LOCATIONS / VERCLES (ACORD 101, Additional Remarks Schoolds, may be attached if more space is required)
Glassboro Board of Education its governing body and employees are included as additional insured per written contract for the engoing and compisted operations of the insured. CERTIFICATE HOLDER CANCELLATION should any of the above described policies be cancelled before THE EXPIRATION DATE THEREOF, NOTICE WALL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. Glassboro Board of Education 560 Joseph Bowe Memoria Blvd Glassboro, NJ 08028 AUTHORIZED REPRESENTATIVE

ACORD 25 (2016/03)

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