



Education Law Center

Standing Up for Public School Children

October 7, 2011

Assistant Attorney General Beth Leigh Mitchell
Office of Fiscal Integrity in School Construction
Office of the Attorney General
Richard J. Hughes Justice Complex
CN 112
Trenton, NJ 08625

Matthew Boxer, New Jersey State Comptroller
Office of the State Comptroller
PO Box 024
Trenton, NJ 08625

Re: Lanning Street School Project Site

Dear AAG Mitchell and Comptroller Boxer:

Please accept this letter as a formal request for the Office of Fiscal Integrity in School Construction and the Office of the State Comptroller to undertake an investigation, either jointly or individually, into the decision of the School Development Authority (SDA) to enter into a "Use and Occupancy Agreement" (U&O Agreement) with the Camden County Improvement Authority (CCIA) for a portion of the land (Site) designated for a new elementary school to replace the Lanning School in Camden. As explained below, the SDA, without informing the Camden Public Schools (Camden district), parents, students, community residents or members of the general public, agreed to allow the site of an SDA-owned and "shovel ready" school project to be used through June 2012 for a purpose wholly unrelated to the agency's constitutional and statutory responsibilities.

In 2007, the Legislature, in amending EFCFA "to ensure that the [SDA] ... has adequate internal controls, processes, and procedures to undertake additional school facilities projects," established the Office of Fiscal Integrity (OFI) in School Construction in the Office of the Attorney General. The OFI has the explicit authority to "investigate, examine and inspect the activities" of the SDA "related to the financing and construction of school facilities." P.L. 2007, c.52; P.L. 2007, c.137; N.J.S.A. 52:18A-235h; N.J.S.A. 18A:7G-43. Further, the

Legislature also established the Office of the State Comptroller to provide increased financial oversight of independent State authorities, including the SDA, by conducting audits and assessing the integrity of "financial management, contracting, financial reporting and the delivery of government programs" to achieve the goal of "increasing public trust and confidence that every tax dollar collected by government is spent wisely and well." P.L. 2007, c.52; N.J.S.A. 52-15C-1 et. seq.

The SDA has the constitutional and statutory responsibility to finance and construct educationally needed school facilities pursuant to the Supreme Court's decision in Abbott v. Burke, 153 N.J. 480, 519-525 (1998) (Abbott V); N.J.S.A. 52:18A-35 et seq.; and the Educational Facilities Construction and Financing Act, N.J.S.A. 18A:7G-1 et seq. (EFCFA). The SDA's decision to enter into a contract with giving the CCIA sole use of the Lanning Site raises serious and substantial issues directly implicating the SDA's legal authority to do so, as well as the integrity of the SDA's fiscal practices, use of funds, contracting procedures, financial reporting, and protocols for managing land assets. Thus, this matter falls within the direct scope of responsibilities of your respective Offices.

Education Law Center (ELC) submits this request for a prompt and thorough investigation, including a complete accounting and audit of the SDA's actions relating to the Lanning site, in its capacity as counsel for the class of Plaintiff school children in the Abbott v. Burke case, whose constitutional right to attend safe and educationally adequate school facilities was established by the Supreme Court in Abbott V and implemented through the statutes cited above. The Abbott class includes those children in the Camden district who will directly benefit from the SDA promptly advancing and completing the construction of a new, replacement Lanning School.

A. Background

1) The Lanning Elementary School Project

The Lanning school facilities project involves a new school to replace the former Lanning elementary school that primarily served children from the Lanning section of Camden. In 2003, Lanning was ordered closed on an emergency basis as a result of structural defects that threatened the health and safety of students and staff. As a temporary measure, until the Schools Construction Corporation (the predecessor to the SDA) could build a new school on the site, the over 600 Lanning students

were placed in two Camden schools - Broadway and Fetters. Both of these schools are well over 120 years old, in poor condition and educationally inadequate. In the Camden district's Long Range Facilities Plan (LRFP), submitted under Abbott V and EFCFA and approved by the Department of Education (DOE), Broadway is designated for demolition and Fetters is to be permanently vacated and taken out of service.

A new facility to replace the demolished Lanning School was also included in the Camden district's LRFP. On application by the district, the project was approved for construction by DOE and transmitted to the SDA for construction prior to 2005. As designed and approved by DOE, the new Lanning project consists of construction of a new Pre-Kindergarten through 8th grade elementary school that will replace the previously demolished Lanning Square Elementary School. The facility will educate 615 students and will contain 33 classrooms, including science labs and self-contained special education classrooms, gymnasium, cafeteria, auditorium and media center. According to data from the 2008 SDA capital plan, the SDA estimated the cost of building the new school at \$32.7 million, not including pre-construction costs.

From 2006 until 2010, the SDA contracted for, and completed, numerous activities necessary to prepare the site for construction: demolition of the closed school; purchase of an adjacent parcel to expand the site footprint; site remediation; and architectural designs and plans for the new school.

The final site for the new Lanning School consists of the land owned by the Camden district - the land on which the demolished school had been located - and the additional parcels purchased by the SDA to expand the footprint for the new school.

By the end of 2009, all pre-construction activities on the project were completed, including preparation of the architectural design and specifications. Since January 2010, the SDA has not taken any steps to advance the project to bidding and construction. According to SDA records, the agency has expended to date approximately \$10.1 million to date, including land acquisition, to prepare for construction of a new school on the Lanning site.

In late August 2011, the Camden district discovered cracks and other structural defects at the Broadway school apparently caused by the August 24th earthquake. On recommendation from engineers retained by the district, the

Broadway school was ordered closed for an indefinite period. The Lanning students at Broadway - approximately 125 Pre-k to second grade children - are now being bused outside of their neighborhood to the Parkside School. Parkside was built in 1910, and was closed in June 2011 as part of a school consolidation plan by the Camden district. The school is designated for replacement in the district's approved LRFP.

2) The CCIA Use and Occupancy Agreement

Sometime in September 2010, SDA staff began negotiating and drafting an agreement to permit the CCIA use of a portion of the Site owned by the SDA as a "staging area" for equipment and other materials to be used in the construction of a new medical building on an adjacent parcel. The medical school project is part of an expansion of the Cooper Hospital complex.

ELC has been unable to obtain information on how the SDA initially decided to make the Site available to the CCIA for use in the medical center project. As a result, it is unclear who initiated the request to the SDA to give the CCIA access to the Site, whether any state or local elected officials were involved in the request, and the identity of SDA officers and/or staff who made the decision to proceed with the CCIA agreement, the objective of which appears to be unrelated to the SDA's constitutional and statutory mission. It is also unclear what factors were considered by the SDA in deciding to enter into a contract with the CCIA, including the specific terms negotiated to allow the CCIA use and occupancy of the Site. There is no record that the SDA undertook this transaction through any public process, such as requests for proposals, public bidding, or other public contracting procedures.

From the limited information obtained by ELC, it appears that negotiations over the terms of the agreement, and various drafts of the agreement, were exchanged between representatives of the SDA and CCIA from September through November 2010. At some point, the parties reached the terms of a final agreement, contained in a written document dated November 17, 2010. (Use and Occupancy Agreement between the SDA and the CCIA, November 17, 2010) (U&O Agreement). For your information, we have attached a copy of the final U&O Agreement.

Under the terms of the Agreement, specified as a "use and occupancy agreement," the CCIA is given sole use of the Lanning school site "for a temporary staging and access area related to the construction of the Cooper Medical School of Rowan

University" through June 2012 for a "use fee" of \$2500 per month. (See paragraphs 3, 4 and 6).

There is no public record that the SDA Chief Executive Officer, or other SDA official, sought, at any time, approval of the U&O Agreement by the SDA Board of Trustees. In the minutes of the December 1, 2010 SDA Board meeting, less than two weeks after the U&O Agreement was executed, the SDA board, on recommendation from the SDA CEO, approved new agency operating procedures that exempted SDA-owned property leases with a value under \$1 million from Board approval, instead giving staff the sole authority to enter into such agreements without any oversight by the Board of Trustees.

There is also no public record that the SDA informed or obtained the approval of the Camden district before entering into the U&O Agreement with the CCIA. Nor is there any record that the SDA took any steps to inform the Lanning school parents and students, the Lanning Square Residents Association, or residents of the Lanning neighborhood, about the Agreement. There is no public record of the SDA announcing the transaction, and the SDA has not, to date, publicly released a copy of the U&O Agreement. ELC obtained a copy of the U&O Agreement in response to a request under the Open Public Records Act (OPRA).

There is also no public record of the SDA informing DOE of the decision to allow CCIA to use the Site or of the SDA seeking or obtaining DOE support for the agreement given that DOE had previously approved construction of the replacement Lanning School as educationally needed. Based on ELC review of the public record, it appears that the first public disclosure about the U&O Agreement was made by the SDA CEO in March 2011 -- approximately four months after entering into the Agreement -- at oversight hearings of the Facilities Subcommittee of the Joint Committee on the Public Schools and the Assembly Education Committee.

Additionally, ELC has obtained records suggesting that the SDA authorized various contractors to construct fencing and perform other activities to prepare the Site for CCIA use as a staging area for the Cooper medical school project. These records do indicate that CCIA provided reimbursement for some activities. However, there has been no public audit or accounting of the funds spent by the SDA on the transaction and the extent to which CCIA reimbursed the SDA for these expenditures. There is also no public accounting of the time and cost to taxpayers attributable to the SDA staff, attorneys,

and consultant involvement in the negotiation, drafting, and implementation of the U&O Agreement.

B. Request for Investigation

The above facts raise substantial questions about the propriety of the SDA's actions in light of its constitutional and statutory mandates; the appropriateness of entering into a U&O Agreement with the CCIA for its use of a site designated and "shovel ready" for new school construction through June 2012; the lack of transparency and public accounting related to the U&O Agreement; and the improper use of taxpayer funds. Through OPRA, ELC has obtained some documents from the SDA, including the U&A Agreement, a full and complete review and public accounting of this transaction is necessary to ensure that taxpayer dollars were spent appropriately and wisely. Accordingly, we request that your respective agencies conduct a full investigation, either jointly or individually, into, but not limited to, the following matters:

1) The identity of the individual(s), party(ies) and/or organization(s), including any State or local elected official, that approached the SDA and/or sought the SDA's agreement to make the Site available to the CCIA for use in the Cooper Hospital construction project.

2) The identity of all SDA officials who made the decision to make the Site available to the CCIA, and who gave final approval to the U&O agreement.

3) The process, protocols, factors and/or criteria considered and/or utilized by the SDA to agree to make the Site available for use and occupancy by the CCIA, including the extent to which, if at all, the SDA took into account the status of the Site as necessary to construct a DOE-approved, and shovel ready, school for the displaced Lanning students.

4) Whether SDA consulted with, and/or obtained the approval of, the DOE before entering into the U&O Agreement with the CCIA.

5) Whether the SDA consulted with, and/or obtained the approval of, the Camden district before entering into the U&O Agreement with the CCIA, or at any time thereafter.

6) Whether the SDA consulted with, or otherwise informed, the parents and students of Lanning school, and/or residents of

the Lanning neighborhood, before entering into the U&O Agreement or at any time thereafter.

7) The factors, criteria and other standards utilized by the SDA to negotiate and agree to the terms of the U&O Agreement with the CCIA, including, but not limited to, fees, length of agreement, escrow account, and other contract provisions.

8) Whether the SDA staff informed the SDA Board of Trustees of the U&O Agreement and/or sought Board approval the final Agreement. If the SDA Board did not consider and/or approve the U&O Agreement, the reasons for the staff decision to act without Board consideration or approval.

9) The reasons, if any, for the SDA not to utilize public contracting procedures to seek to obtain bids in this matter.

10) A full and complete accounting of all funds received and disbursed by the SDA in the negotiating and preparing the U&O Agreement, and in the implementation of the Agreement to date.

11) A full and complete accounting of the SDA staff and consultant time and costs expended in the preparation, negotiation and implementation of the U&O Agreement.

12) A full and complete accounting of the CCIA's reimbursements to the SDA, if any, and the extent to which they reimbursed the full extent of the expenditures of the SDA, including the time and costs of SDA staff.

13) A full and complete accounting and audit of the SDA's escrow account established under the U&O Agreement.

14) A description of all work performed by, or on behalf of, the SDA to make the Site available for use by the CCIA and to maintain the Site for CCIA use to date.

15) Whether the SDA has entered into any similar types of agreements or lease agreements for the use and/or occupancy of other sites of DOE approved school construction projects in any other SDA district.

16) The current status of the Lanning school project, and the SDA plans and timetable to advance the project to construction.

Based on your investigation, we further request that you prepare and make public a report and audit addressing the above issues, and any other appropriate areas you determine are necessary for a full and complete investigation. We further request that the report and audit make findings and recommendations for ensuring the SDA's fiscal integrity, proper contracting practices, and appropriate protocols and procedures for managing SDA-owned land and buildings in SDA districts in the future, as well as any other findings and recommendations resulting from your thorough investigation of this matter.

C. Conclusion


At the heart of this matter are the hundreds of displaced Lanning students, and their parents and residents of the Lanning neighborhood who, in 2003, were assured expeditious construction of a new school to replace an antiquated, dangerous and severely deficient facility. In response to that commitment, the SDA and the Camden district worked diligently, until January 2010, to prepare the Site, complete architectural and other designs and specifications, and otherwise advance the project to "shovel ready" status, expending over \$10 million to do so.

Against this backdrop of urgent educational need, and expenditure of scarce tax dollars, the SDA's decision and actions, out of public view, to make the Site available for an extended period for a purpose wholly unrelated to agency's core mission - the financing and construction of educationally needed school facilities - warrants expeditious and thorough attention by your respective Offices.

ELC stands ready to make available the documents we have obtained thus far through OPRA and any other information we may be able to provide to assist with your investigation. We also request that, within fourteen (14) days of the receipt of this letter, you promptly notify ELC of your decision to commence the investigation, whether your Offices will undertake the investigation separately or jointly, and a proposed timetable for completing the investigation.

Please do not hesitate to contact me to discuss this matter, and as may be necessary to further your investigation. Thank you for your consideration, and I look forward to your response.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David G. Sciarra". The signature is fluid and cursive, with a large initial "D" and "S".

David G. Sciarra, Esq.
Executive Director

cc: Marc Larkin, CEO SDA Board Chair
Christopher Cerf, Acting Commissioner of Education
Ruben Mills, Assistant Superintendent, Camden District
Keith Stewart, Lanning Square Residents Association
Sheila Davis, Lanning Square Residents Association

USE AND OCCUPANCY AGREEMENT

USE AND OCCUPANCY AGREEMENT ("Agreement") entered into this 11 day of November, 2010 by and between the NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY, whose address is 1 West State Street, P.O. Box 991 Trenton, New Jersey 08625, (the "Authority,") and the CAMDEN COUNTY IMPROVEMENT AUTHORITY, whose address is: 1909 Route 70 East, Suite 300, Cherry Hill, New Jersey, 08003, hereinafter referred to as ("CCIA").

WITNESSETH:

WHEREAS, the Authority has acquired land located in the City of Camden, County of Camden, and State of New Jersey designated as all of Blocks 193, 194 and 198 on the Tax Map of the City of Camden (the "Site") as graphically shown on **Exhibit A** attached hereto and made a part hereof; and

WHEREAS, the Authority has demolished all of the improvements on the Site; and

WHEREAS, the Authority, has plans, at a time yet to be determined, to construct on the Site and on the property adjacent to the Site known as City of Camden Tax Block 197, owned by the Camden City School District, (the two such lands being hereinafter referred to as the "Project Site") a school facilities project for the benefit of the Camden City School District to be known as the Lanning Square Elementary School (the "Project"); and

WHEREAS, CCIA desires to occupy a 152.8 x 216.3 (32,983) square foot portion of City of Camden Tax Block 193, as more particularly described in the metes and bounds description annexed hereto as **Exhibit B-1** and as shown on the survey annexed hereto as **Exhibit B-2** (the "Property") for the uses hereinafter set forth during the period prior to the commencement by the Authority of construction of the Project as hereinafter set forth; and

NOW, THEREFORE, in consideration of the terms and conditions of this Agreement and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. **Grant of Use of the Premises.**

The Authority hereby grants to CCIA use of the Property for the purposes and upon the terms and conditions hereinafter set forth. CCIA acknowledges that the Property consists of vacant land and that the Authority makes no representation that the area or dimensions of the Property are adequate, safe or sufficient for its intended uses as described in Paragraph 3 of this Agreement. CCIA further understands, acknowledges and agrees that except as otherwise provided in Paragraph 2 hereof, CCIA has inspected the Property and accepts the Property "as is" in its condition and state of repair existing as of the date hereof and without any reliance upon any representations or warranties, expressed or implied, from the Authority or its agents as to the condition of the Property or as to the suitability of the Property for CCIA's intended use(s) thereof.

2. Preparation of Premises and Delivery Costs

Notwithstanding that CCIA is taking the Property "as is" in accordance with the provisions of Paragraph 1 above, in compliance with the provisions of N.J.A.C. 19:35-1 et seq. governing third party use of Authority property, and in order to protect the Property and the Project Site of which the Property comprises a part, and to preserve the same in their condition existing on the Commencement Date as appropriate for the construction of the Project. CCIA understands and agrees that in order for the Authority to enter into this Agreement permitting the use and occupancy of the Property by CCIA, certain costs associated with the delivery of the Property to CCIA (the "Delivery Costs") will be incurred and borne by CCIA. The Delivery Costs shall include, but not be limited to the following: (1) the cost of appraisals necessary to determine fair market rent for the Property; (2) the cost of obtaining a boundary and metes and bounds description of the Property; (3) the cost of the installation of fencing necessary to separate the Property from the remainder of the Site and from the adjacent property owned by the Camden Public School District; (4) the cost of obtaining a pre-delivery environmental condition and as-built site conditions reports ("Site Delivery Conditions Report"); (5) the amount of any increased insurance premiums payable by the Authority with respect to the Site as a result of the use and occupancy of the Property by CCIA; and (6) the cost of obtaining revisions to the Authority's construction phasing plan for the Project. Prior to the Commencement Date the Authority shall provide notice ("Delivery Cost Notice") to CCIA of the amount of the known Delivery Costs. CCIA understands and agrees that delivery of possession of the Property by the Authority to CCIA is conditioned upon payment of the Delivery Costs as set forth in the Delivery Cost Notice. To the extent that any amounts attributable to the Delivery Costs are not known prior to the Commencement Date and not included in the Delivery Cost Notice, estimated amounts for such costs shall be included in an escrow amount in accordance with the terms of Paragraph 24 hereof and such escrow amount shall be drawn upon, replenished, or refunded, as the case may be, in accordance with the provisions thereof.

3. Use.

(a) The Property shall be used by CCIA, its representatives, employees, prime contractors and subcontractors as and for a temporary staging and access area related to the construction of a new Cooper Medical School of Rowan University on property located directly north of the Site (the "CCIA Site"). CCIA's use of the Property shall be limited to (1) use as a lay-down area for construction materials; (2) storage of construction machinery and equipment; and (3) location of temporary construction offices.

(b) CCIA will maintain all operations within the fenced boundaries of the Property, using its best efforts to minimize the impact on adjacent properties and the remainder of the Project Site, with attention given to safety, traffic mitigation and parking regulation.

(c) CCIA understands, acknowledges and agrees that the Property shall be totally, physically separated from the remainder of the Project Site and shall be surrounded by a perimeter fence which shall be secured by two (2) locked gates, one fronting on 5th Street and the other fronting on Washington Street. CCIA agrees that the gates shall remain locked and secure at all times except during hours of active construction at the CCIA Site.

4. Term.

(a) The permission to use the Property granted hereunder shall commence the date this Agreement is executed by both parties (the "Commencement Date") and shall expire on the earlier of (i) June 30, 2012 or (ii) the expiration of sixty (60) days after either party hereto shall give notice (the "Termination Notice") to the other of its desire to terminate this Agreement. This Agreement may also be terminated by the Authority "for cause" as described in Paragraph 4(b) below, in which event this Agreement may be canceled on fifteen (15) calendar days' written notice (the "Default Termination Notice"). The effective date of the termination of this Agreement pursuant to subclause (i) above or pursuant to the giving of either a Termination Notice or Default Termination Notice, as the case may be, is hereinafter referred to as the "Termination Date". Effective as of the Termination Date, CCIA will have no lawful right to remain in possession of the Property and the Authority shall have the right to commence an action for recovery of the Property, damages or any other remedies available under law.

(b) This Agreement may be terminated for cause. Termination "for cause" shall mean termination arising out of the failure of CCIA to perform any of the terms and conditions of this Agreement after notice and the opportunity to cure the deficiency. If the Authority discovers any unsafe or unsightly condition or any disruptive activity on or within the Property, CCIA shall commence to remedy the condition or activity at CCIA's expense within seventy-two (72) hours' notice from the Authority. Such notice may be oral, in which event said oral notification shall be memorialized by written confirmation in accordance with the Notice provisions set forth in Paragraph 19 hereof. If CCIA fails to resolve the deficiency within the fifteen (15) days following such notice, the Authority may terminate this Agreement by the giving of the Default Termination Notice.

(c) CCIA agrees that if for any reason it fails to deliver possession of the Property to the Authority on or before the Termination Date, Authority may **WITHOUT FURTHER NOTICE, IMMEDIATELY OR AT ANY TIME THEREAFTER** enter upon or re-enter the Property, or any part thereof, and remove CCIA's property from the Property and place it in an appropriate temporary storage facility and/or location and CCIA waives any right to object to such action. In such event CCIA shall be liable for all additional costs incurred by Authority to evict or otherwise remove CCIA from the Property, including, but not limited to, the storage costs and reasonable attorney's fees. In addition to the rights and remedies of the Authority set forth in the preceding provisions of this Paragraph, CCIA further understands, acknowledges and agrees that in the event CCIA shall fail to peaceably quit, surrender and deliver possession of the Property to the Authority by the Termination Date, the Authority or its agents and/or employees may possess or repossess itself or themselves of the Property either by summary dispossession proceedings, ejectment, any available, suitable action or legal proceeding available at law, agreement, force or otherwise, and may dispossess and remove CCIA and all other persons and property from the Property without being liable to indictment, prosecution, or damages therefore, and may repossess the same, and may remove any persons therefrom, to the end that the Authority may have, hold and enjoy the Property again. The words "enter" or "reenter", "possess" or "repossess" as used in this Agreement are not restricted to their technical legal meaning.

(d) If CCIA fails to quit and surrender the Property on or before the Termination Date such failure shall not be deemed to extend the permission to use the Property granted hereunder or to renew this Agreement, but, in addition to all other remedies available to the Authority under this Agreement or at law, CCIA agrees to pay to the Authority, as liquidated damages, not as a penalty, an amount equal to 150% of the Use Fee and Additional Fees in effect on the Termination Date, as set forth in Paragraph 6 hereof, until such date as CCIA shall deliver possession of the Property to Authority.

5. Early Termination / Abandonment

(a) CCIA acknowledges that the Authority has, under the exercise of its eminent domain powers pursuant to the Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq., obtained title to the Site of which the Property is a part. CCIA understands, acknowledges and agrees that (i) the Property was acquired by the Authority pursuant to the Educational Facilities Construction and Financing Act, P.L. 2000, c.72, for the construction of the Project, (ii) it is critical that the Property be vacated on or before the Termination Date; (iii) the Authority is relying upon CCIA's representations hereunder and the provisions of this Paragraph 5 and Paragraphs 4 and 20 hereof to insure that the possession of the Property is obtained in a timely manner for purposes of the construction of the Project; and (iv) the terms governing the surrender of the Property by CCIA on or before the Termination Date constitute material provisions of this Agreement. CCIA further acknowledges that Paragraph 4 of this Agreement sets forth the right, on behalf of either party hereto, to terminate this Agreement upon sixty (60) days notice. In the event of the exercise by either party hereto of said right to terminate this agreement, CCIA shall vacate the Property by no later than the Termination Date by removing all of its property therefrom. If, during CCIA's exit from the Property any damage occurs to the Property, CCIA shall pay to the Authority the reasonable cost of repairing such damage.

(b) In the event that CCIA shall abandon the Property for a period of thirty (30) days or more, the license to use and occupy the Property granted hereunder shall cease and terminate with the same effect as if a Termination Notice had been given and the sixty (60) day notice period had expired, except that Licensee shall remain liable for all Additional Fees, Delivery Costs and U&O Costs (as such terms are hereinafter defined) as provided for hereunder and CCIA understands and agrees that in such event, any Escrow Deposit remaining on deposit with the Authority will be applied against amounts due to the Authority hereunder. To the extent the amount of the Escrow Deposit shall be insufficient to cover amounts due from CCIA to the Authority hereunder, CCIA shall remain liable for any balance.

6. Fees

(a) CCIA shall pay to the Authority the sum of TWO THOUSAND FIVE HUNDRED and none/100 (\$2,500.00) DOLLARS per month (the "Use Fee") as the fee for the use and occupancy of the Property during the term of this Agreement. The Use Fee shall be paid by CCIA to the Authority in advance on the first day of each and every month during the term, except that the first monthly installment of the Use Fee shall be paid at the signing of this Agreement, receipt of which is hereby acknowledged. The Use Fee should be sent to the New Jersey Schools Development Authority, P.O. Box 991, Trenton, NJ 08625-0991, Attention: Howard Windsor, Financial Analyst.

Should the obligation to pay the Use Fee commence on other than the first day of a calendar month, or terminate on other than the last day of a calendar month, then the Use Fee for such month shall be prorated on a per diem basis.

(b) In addition to the Use Fee, CCIA shall also pay to the Authority "Additional Fees". Additional Fees are defined as (1) all costs incurred by the Authority in connection with the preparation and delivery of the Property to, and use of the Property by, CCIA, including but not limited to the amount of any unbilled and/or unpaid Delivery Costs referenced in Paragraph 2 hereof; (2) any amounts which may be incurred by or charged to the Authority with respect to the Property, and CCIA's use and occupancy thereof; (3) the cost of "Quarterly Inspections" (as defined in Paragraph 22 hereof) performed by the Authority due to the failure of CCIA to perform such obligations on a timely basis as contemplated under Paragraph 22 hereof, and (4) any amounts which are attributable to CCIA's maintenance obligations with respect to the Property. Additional Fees shall be paid by CCIA to the Authority, or as directed by the Authority, within sixty (60) days of submission by the Authority of an invoice with respect thereto.

7. Legal Requirements.

This Agreement shall be specifically contingent upon and subject to CCIA obtaining, at its sole cost and expense, any and all required governmental approvals for the permitted use of the Property. No improvements of any kind or nature shall be made to the Property by CCIA without the prior written consent of the Authority which consent may be withheld in the Authority's sole discretion.

8. Site Maintenance and Security.

(a) CCIA shall, at its sole cost and expense, at all times during the term of this Agreement keep, maintain, and repair the Property in a safe condition, free from rubbish and waste, and shall maintain the sidewalks adjacent to the Property in good condition and repair and free from ice and snow, and shall perform all necessary maintenance, repair and replacement of all or any portion of the perimeter fence. To the extent that CCIA shall not perform such maintenance in a timely manner, including without limitation, ice and snow removal on any sidewalks adjacent to the Property, the Authority shall perform the same on behalf of CCIA and the cost thereof shall be payable as an Additional Fee pursuant to the provisions of Paragraph 6(b) hereof.

(b) CCIA has been advised that the Authority may, as a result of the use and occupancy of the Property by CCIA granted hereunder, be required to perform certain maintenance with respect to the Project Site that it would not otherwise perform ("Authority Maintenance Work") including, without limitation, trash removal, and the maintenance of and snow and ice removal from the sidewalks adjacent thereto. CCIA understands and agrees to pay the cost of any such Authority Maintenance Work and acknowledges that its agreement to be responsible for the cost and expense thereof is a material consideration to the Authority entering into this Agreement. The cost of the Authority Maintenance Work shall be payable by CCIA as an Additional Fee hereunder.

(c) CCIA acknowledges, understands and agrees that the Authority is relying on

CCIA and its obligation hereunder to perform the environmental stewardship obligations with respect to the Site as described in Paragraph 22 of this Agreement as well as required maintenance in and around the perimeter of the Site of which the Property forms a part.

(d) CCIA shall provide, at its sole cost and expense, a reasonable number of security/supervisory personnel to supervise the activities at and for protection of the Property during the term of this Agreement. In support thereof, CCIA shall be responsible to enforce and prosecute any and all laws and ordinances against all persons on or at the Property for the benefit and protection of the same. CCIA shall use its best efforts to prevent vandalism and other destruction to the Property. CCIA shall strictly monitor and maintain control over the locks to the gates at all times. CCIA shall be permitted to change the locks to the gates upon prior notice to the Authority provided that the Authority shall be provided in advance with a new key(s) to such changed locks. In the event the Property or any part thereof, including the fencing surrounding the perimeter of the Property, shall be damaged by acts of vandalism, CCIA shall give prompt notice of any such damage to the Authority and shall, at its sole cost and expense, immediately thereafter, repair and restore the Property to the condition that existed prior to such vandalism.

9. Utilities and Other Charges.

CCIA shall arrange for and pay directly, all lighting, grounds keeping and other maintenance charges for the Property, security for the protection of the Property and stand-by fire protection charges, if any. CCIA shall also pay directly to the public or private utility, when due, all charges for heat, electricity, gas, water, sewer and other public and private utilities and services furnished to the Property during the term of this Agreement, if any. Notwithstanding the foregoing, the parties acknowledge as of the date of this Agreement, CCIA anticipates that its consumption of utilities at the Property will be limited to: telephone service, electric service, and temporary water and sewer lines.

10. No Assignment.

CCIA shall not assign this Agreement, sublet any or all of the Property, or otherwise permit use or occupancy of the Property by anyone other than CCIA.

11. Indemnification and Limitation of Liability.

(a.) CCIA shall assume all risk and responsibility for and agrees to indemnify, defend and save harmless the Authority, its employees and officials from and against any and all demands, suits, actions, recoveries, judgments, costs and expenses in connection therewith on account of either (i) the loss of life, property or injury or damage to the body or property of any individuals or entities whatsoever, which directly or indirectly arise or result, or is alleged to arise or result from the use, condition, occupancy, management and maintenance of the Property and any improvements or equipment found thereon; (ii) occurs or is alleged to have occurred on or about the Property (iii) any failure on the part of CCIA to perform or comply with any legal or insurance requirements or any of the covenants, terms, provisions or conditions contained in this Agreement to be performed by CCIA, or (iv) arises from the acts or omissions of CCIA as occupant, or CCIA employees, agents, invitees, licensees and contractors. Notwithstanding the preceding provisions of this Paragraph 11(a), CCIA shall not be required to indemnify the Authority for claims contemplated hereunder arising out of the willful act(s) of the Authority.

(b.) In case any action or proceeding is brought against the Authority by reason of any of the foregoing, CCIA, upon written notice from the Authority shall, at CCIA's expense, resist or defend or cause to be resisted or defended such action or proceeding. CCIA or its counsel shall keep the Authority apprised at all times of the status of the action or proceeding. At the request of CCIA, the Authority will cooperate with CCIA in any such action or proceeding, and will execute any documents and pleadings reasonably required for such purpose and CCIA hereby agrees to save the Authority harmless from all cost, expense (excluding attorneys' fees), loss and damage on account of, growing out of, or resulting from, such cooperation. The establishment of limits of coverage for the insurance required by Paragraph 12 shall not serve in any way to limit CCIA's obligations pursuant to this Paragraph 11. The provisions of this Paragraph 11 shall survive the expiration or termination of this Agreement.

(c.) The Authority shall not be liable for any injury or damage which may be sustained by CCIA or any other person as a consequence of the failure, breakage, leakage or obstruction of the drainage, location of utility poles, water, plumbing steam or waste pipes, and the like or the electrical, gas, power, sprinkler or resulting from the carelessness, negligence or improper conduct by CCIA, its employees, agents, invitees, licensees and contractors. Notwithstanding the preceding provisions of this Paragraph 11(c), CCIA shall not be required to indemnify the Authority for claims contemplated hereunder arising out of the willful act(s) of the Authority.

12. Insurance.

During the term of this Agreement, CCIA, at its sole cost and expense, shall carry and maintain:

(a) Commercial Property Insurance. In no event shall the Authority be liable for any business interruption or other consequential loss sustained by CCIA, whether or not it is insured, even if such loss is caused by the negligence of the Authority or its agents.

CCIA may, at its option, purchase insurance to cover its personal property. In no event shall the Authority be liable for any damage to or loss of personal property sustained by CCIA, whether or not it is insured, even if such loss is caused by the negligence of the Authority, its employees, officers, directors or agents. Any deductible or self-insured retention applicable to the aforementioned insurance shall be declared to and approved by the Authority.

(b) Commercial General Liability. CCIA shall maintain Commercial General Liability ("CGL"), and, if necessary, Commercial Umbrella Insurance with a limit of not less than \$5,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Property. CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract.

The Authority shall be included as an insured under the CGL, using ISO Additional Insured

endorsement CG 20 11 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance programs afforded to the Authority by the CCIA.

CCIA, as a material part of the consideration given to the Authority hereunder, hereby assumes all risk of damage to its property or injury to all persons and personal property in or upon the Property. CCIA hereby releases and relieves the Authority, and waives its entire right of recovery against the Authority for any loss or damage arising out of or incident to CCIA's use of the Property.

(c) Business Automobile Liability. CCIA shall, at its sole cost and expense, maintain Business Automobile Liability and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). The Business Automobile coverage shall be written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage). If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

The policy shall provide that any exclusion for bodily injury or property damage caused by the dumping, discharge or escape of irritants, pollutants or contaminants "does not apply to accidents that occur away from the premises owned by or rented to an insured with respect to 'pollutants' not in or upon a covered auto if: (a) the 'pollutants' or any property in which the pollutants are contained are upset, overturned or damaged as a result of the maintenance or use of a covered 'auto'; and (b) the discharge, dispersal, seepage, migration, release or escape of the 'pollutants' is caused directly by such upset, overturn or damage."

NJSDA shall be included as an insured under the Business Automobile, using ISO Designated Insured endorsement CA 20 48 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any.

(d) Workers' Compensation and Employers' Liability. CCIA shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance covering all of its employees on, in, or about the Property in accordance with applicable statutes of the State of New Jersey to be endorsed to include coverage for any federal or other state law that may be found to have legal jurisdiction. The Employers' liability limits (including Umbrella coverage) shall not be less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease and \$1,000,000 policy limit for bodily injury by disease.

(e) Waiver of Subrogation. CCIA and the Authority hereby waive any recovery of damages and rights against each other (including their employees, directors, officers, agents or representatives) for loss or damage to the building, improvements and betterments, fixtures, equipment, and any other personal property to the extent covered by the commercial property insurance or boiler and machinery insurance required above.

If the Commercial Property insurance purchased by CCIA as required above does not expressly allow the insured to waive rights of subrogation prior to loss, CCIA shall cause them to be endorsed with a waiver of subrogation as required above.

(f) Certificate of Insurance. Prior to the Commencement Date, CCIA shall furnish to the Authority a certificate of insurance (Acord 25 1/2009 edition), executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. All certificates shall provide for thirty (30) days written notice to the Authority prior to cancellation and/or material change of any insurance referred to therein. Failure of the Authority to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Authority to identify a deficiency from evidence that is provided shall not be construed as a waiver of CCIA's obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this Agreement at the Authority's option. CCIA shall provide certified copies of all insurance policies required within ten (10) days of the Authority's written request for such policies. If CCIA fails to maintain the insurance as set forth herein, the Authority shall have the right, but not the obligation, to purchase said insurance at CCIA's expense, and the cost to the Authority in connection therewith, including without limitation, the Authority's reasonable attorneys fees, shall be payable as an Additional Fee hereunder. By requiring insurance herein, the Authority does not represent that coverage and limits will necessarily be adequate to protect CCIA and such coverage and limits shall not be deemed as a limitation on CCIA's liability granted to the Authority in this Agreement.

(g) Form of Policies. All insurance policies shall be of a company or companies authorized to do business in the State of New Jersey with an A- or better rating as determined by A. M. Best Company or through insurance coverage placed through the Camden County Municipal Joint Insurance Fund, or other joint insurance fund approved by the New Jersey Department of Banking and Insurance.

13. Right of Entry.

The Authority and its authorized representatives shall have the right to enter the Property at any time during the term of this Agreement for the purposes of (i) inspecting the Property, (ii) installation of utility lines, and connections as shown on Utility Plan UT001 (through revision number 4 of 7/19/10) and Grading and Drainage Plan GD001 (through revision number 4 of 7/19/10) (such Utility Plans, as the same may be modified based on construction design requirements associated with the Project are hereinafter jointly and severally referred to as the "Utility Plan(s)") which Utility Plans were delivered to CCIA on October 18, 2010, receipt of which are hereby acknowledged; (iii) in cases of emergency, and (iv) for curing any deficiency of CCIA at the Property. The Authority shall not be liable to CCIA for any damage caused during the Authority's forced entry, if any, in the event that an emergency situation requires such forced entry. Any cost incurred by the Authority in connection with any such entry shall be paid by CCIA as an Additional Fee hereunder. Except in cases of emergency, the Authority shall, to the extent practicable, give CCIA twenty-four (24) hours notice in advance of any entry contemplated under this Paragraph 13 (which may be oral) and shall use its reasonable efforts to minimize any interference with CCIA's use of the Property

14. Alterations.

(a) CCIA shall make no alterations, additions or improvements to the Property without the prior express written consent of the Authority, which consent may be withheld in the Authority's sole discretion. Notwithstanding the provisions of the next preceding sentence, the Authority hereby agrees that it will not unreasonably withhold or delay its consent to the

installation of temporary water and sewer lines, temporary driveways (stone or other paving material, excluding asphalt or similar more permanent materials, on the ground surface) and temporary fencing.

(b) In the event the Authority shall consent to any alterations, CCIA shall, at its sole cost and expense, obtain all necessary permits and perform all required work promptly, in a good and workmanlike manner and in compliance with all applicable permits, authorizations and all legal and insurance requirements.

(c) All alterations installed by and/or at the expense of CCIA, shall be removed from the Property at the expiration of or any termination of this Agreement, and the Property, restored to its original condition, shall be surrendered to the Authority on the Termination Date.

15. Compliance with Laws.

CCIA agrees to comply with all Federal, State and local governmental statutes, ordinances, rules, and regulations pertaining to the Property at CCIA's sole cost and expense.

16. Fire or Other Casualty Damage.

In the event the Property or any part thereof shall be damaged by fire or other casualty, this Agreement shall continue in full force and effect except that CCIA shall give prompt notice of any such fire or casualty to the Authority and shall, immediately after such fire or casualty, repair and restore the Property to the condition that existed prior to the casualty at its sole cost and expense.

17. Condemnation.

(a) If the whole or any part of the Property shall be taken under the power of eminent domain by any public or private authority or in the event of sale to such authority in lieu of formal proceedings of eminent domain then this Agreement shall cease and terminate as of the date of the taking or sale which shall be the date that the public or private authority had the right to possession of the Property being taken or sold.

(b) In the event of any taking or sale of all or any part of the Property, the entire proceeds of the award or sale shall be paid to the Authority.

18. Relationship of the Parties.

(a) This Agreement conveys to CCIA a license to use and occupy the Property only. No Landlord/Tenant relationship and no tenancy, leasehold or estate rights on the part of CCIA in the Property shall at any time be construed to arise, exist or to have been created by the Agreement. CCIA hereby expressly acknowledges that it has no interest or estate in the Property.

(b) CCIA shall have no authority, express or implied, to create or place any lien or encumbrance of any kind or nature upon, or in any manner to bind, the interest of the Authority in the Property in favor of any person dealing with CCIA, including those who may furnish

materials or perform labor for any construction being performed by CCIA at the CCIA Site. CCIA will discharge, by bond or otherwise, any mechanic's lien filed against the Property for work claimed to have been done for, or materials claimed to have been furnished to, CCIA within ten (10) days after such filing. CCIA will indemnify, defend and hold the Authority harmless from any and all loss, cost or expense based on or arising out of asserted claims against the right to use and occupy the Property under this Agreement.

19. Notices.

Except as otherwise provided in this Agreement, all notices shall be in writing and sent by certified mail return receipt requested, or by a recognized overnight carrier which provides proof of delivery. Notice shall be sent to the Authority, attention Victor Perla, Deputy Director, 1 West State Street, P.O. Box 991 Trenton, New Jersey 08625 with a copy to Sandra Vieser, Associate Counsel, Office of Chief Counsel,. Notice to CCIA shall be sent to Camden County Improvement Authority, 1909 Route 70 East, Suite 300, Cherry Hill, NJ 08003, Attention: James Blanda, Executive Director. All notices hereunder shall be effective upon the earlier of either three (3) days after mailing (if mailed) or one (1) business day after delivery to the nationally recognized independent overnight courier.

20. Surrender of Premises.

Upon the termination of this Agreement, CCIA shall quit and surrender the Property to the Authority cleared of all personal or business-related property and free from all rubbish, debris and trash and free of any environmental conditions not existing at the Commencement Date to the effect that the Property shall be returned to the Authority in substantially the same condition existing as of the Commencement Date. CCIA acknowledges that it has been advised by the Authority that all necessary environmental work required prior to construction of the Project has been fully performed and that the Property is being delivered to CCIA on the Commencement Date in the condition reflected in the Site Delivery Conditions Report referenced in Paragraph 6 hereof. Immediately following the Termination Date and CCIA's delivery of the Property to the Authority, the Authority shall retain an environmental and/or geotechnical consultant to perform an evaluation of the post vacation site conditions ("Site Vacation Conditions Report"). To the extent that the Site Vacation Conditions Report requires any restoration work be performed to restore the environmental and/or geotechnical conditions at the Property to the conditions reflected in the Site Delivery Conditions Report, such work shall be performed by the Authority at CCIA's sole cost and expense from funds escrowed in accordance with the provisions of Paragraph 24 hereof.

21. Limitation of Liability.

It is specifically understood and agreed that in the event of a breach by the Authority of any of the terms, covenants or conditions of this Agreement to be performed by Authority, CCIA hereby agrees that nothing in this Agreement shall make the Authority or its employees or agents liable to pay any damages or costs for which it and/or they have no liability under the New Jersey Tort Claims Act, N.J.S.A. 59:13-1 et seq. CCIA agrees to be bound by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

22. Activities with Impact to Environmental Conditions/Installation of Monitoring Wells/Quarterly Inspections

(a) CCIA covenants, represents, warrants and agrees as follows:

(i) Subject to the provisions of Paragraph 23 below, CCIA shall not apply to or treat the Property with any herbicides or insecticides, nor shall CCIA cause or permit any hazardous substances or hazardous wastes to be brought, kept, stored, generated or manufactured on, about or within the Property;

(ii) The discharge of water to the ground surface from construction dewatering activities is expressly prohibited;

(iii) The installation of asphalt on the Property is expressly prohibited;

(iv) Any and all fill materials imported to the Property must be clean (e.g. soil, stone) and prior to importing any such fill materials, CCIA agrees to provide the Authority with certifications reflecting that such imported materials comply with NJDEP requirements for unrestricted use;

(v) CCIA will implement dust control procedures as necessary to control dust in access roads and construction areas using accepted, industry standard, and dust suppression measures; and

(vi) CCIA will, at its sole cost and expense, perform all soil erosion and sediment control activities required under the terms of the certified Soil Erosion and Sediment Control Plan for the Site, a copy of which is attached hereto as Exhibit C. CCIA shall also, as applicable, comply with the requirements of NJPDES General Permit No. NJG0088323 pertaining to stormwater discharge activity at the Site, a copy of which is attached hereto as Exhibit D. In the event CCIA shall require modifications to such plans after taking possession of the Property, CCIA shall first submit sketches of the modified plan to the Authority for approval.

(b) CCIA has been advised that the Authority is required by the New Jersey Department of Environmental Protection ("NJDEP") to install ground water monitoring wells ("Monitoring Wells") on the Property as part of the ground water remedial action at the Site. CCIA understands, acknowledges and agrees that the Authority and its employees, agents, contractors and authorized representatives shall have the right to enter the Property at any time during the term of this Agreement for the purposes of installing the required monitoring wells and, thereafter, for purposes of performing required quarterly sampling. In connection with the Monitoring Wells the Authority agrees (i) that it will give to CCIA reasonable advance notice, which may be oral, of any entry required in connection within the installation thereof; (ii) the Monitoring Wells will, to the extent practicable, be installed close to the perimeter of the Property; and (iii) the Authority will use reasonable efforts to minimize any inconvenience to CCIA in connection with any entry hereunder. In connection with any Monitoring Wells installed by the Authority at the Property CCIA understands, acknowledges and agrees to use its best efforts to keep the Monitoring Wells safe and protected from any damage. In the event of any damage to the Monitoring Wells, CCIA, its agents, representatives, employees, licensees, invitees or contractors shall immediately take steps to minimize such damage and shall, to the extent practicable, repair said damage. CCIA shall, in every instance, notify the Authority of any damage to the Monitoring Wells, which notice shall be by phone call directed to Victor Perla,

Deputy Program Director, at (609) 777-1694. Any repairs required to the Monitoring Wells as a result of damage contemplated under this Paragraph 22(b) not immediately performed by CCIA, shall be performed by the Authority at CCIA's sole cost and expense. Notwithstanding the forgoing, nothing contained in this Paragraph 22(b) shall operate to make CCIA or its prime contractors or subcontracts responsible for damage or repairs to the Monitoring Wells that are due to latent defects in the Monitoring Wells or are attributable to the acts of the Authority or its agents or contractors.

(c) CCIA shall, at its sole cost and expense, throughout the term hereof, perform quarterly engineering inspections of the environmental conditions at the Property by a reputable, licensed engineer approved by the Authority (the "Approved Engineers") and provide the Authority with a report with respect thereto. Said inspections are herein referred to as the "Quarterly Inspections" and said report is herein referred to as the "Quarterly Inspection Report". Quarterly Inspections shall be performed at the end of each ninety (90) day period occurring during CCIA's use and occupancy of the Property and the Quarterly Inspection Report shall be delivered to the Authority within twenty (20) days from the date of said Quarterly Inspection. CCIA understands and agrees that time is of the essence with respect to the delivery of a Quarterly Inspection Report to the effect that should CCIA fail to furnish the Authority with a Quarterly Inspection Report within the time periods stated above, the same shall be performed by the Authority and billed to CCIA as an Additional Fee in accordance with the provisions of Paragraph 6 hereof. For the purposes hereof, the Authority hereby agree to the engagement of Langan Engineering and Environmental Services as the Approved Engineer.

23. Hazardous Substances.

CCIA shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any substances, materials and wastes that are or become regulated as hazardous or toxic substances under any applicable local, state, or federal law, regulation or order and shall, at it's sole cost and expense, remove any such hazardous or toxic substances found in, on or about the Property, or the Site of which the Property forms a part, which were placed or released thereon by CCIA, its agents, servants, employees, licensees or invitees. Notwithstanding the provisions of the preceding sentence, the Authority acknowledges that the Property is intended to be used by CCIA for the storage and/or operation of certain construction equipment and machinery in accordance with the use provisions of Paragraph 3 above, and that in connection with such use, there may be stored on the Property a limited quantity of certain substances that are considered to be hazardous materials and/or substances under applicable classifications ("Classified Substances") as set by the New Jersey Department of Environmental Protection ("NJDEP"). CCIA represents to the Authority that any such Classified Substances as are located at the Property are and shall be handled and stored in accordance with NJDEP guidelines and regulations. CCIA further understands, acknowledges and agrees that CCIA is and shall be responsible and liable for acts of CCIA, or any of its agents, employees or contractors, that cause(d) or contribute(d) to any contamination at the Property, and/or if CCIA, or its agents, employees or contractors, shall take actions that cause or contribute to a new hazardous substance discharge on the Property.

In consideration of the representations made by CCIA in this Paragraph 23, CCIA agrees that it shall use its best efforts to prevent the discharge of hazardous substances to the ground surface. CCIA further agrees that prior to bringing classified substances on the Property for the

purposes permitted hereunder CCIA shall provide the Authority with a spill prevention plan ("SPP") that will detail, with respect to any Classified Substances that may be stored on the Property, handling procedures, storage requirements, discharge notification phone numbers and cleanup procedures for areas where discharges may potentially occur. The SPP shall be posted at an appropriate location at the Property. CCIA additionally understands, acknowledges and agrees that (1) all discharges of hazardous substances and any response actions to mitigate such discharges shall comply with local, state and federal laws and regulations; (2) copies of discharge incident reports and the actions undertaken to mitigate the discharge shall be provided to the Authority within ninety (90) days of such discharge; and (3) any incident report shall include a description of the circumstances that caused the discharge, the actions taken to mitigate the discharge, and the final resolution, including any required approvals from local, county or state agencies.

The environmental obligations and responsibilities as set forth in this Agreement shall survive the cancellation or termination of this Agreement.

This Agreement shall not be construed to limit any other environmental obligations or liabilities which CCIA may have under law.

24. Escrow Account.

(a) Upon the execution of this Agreement, CCIA shall deposit with the Authority the amount of **ONE HUNDRED TWENTY-NINE THOUSAND FIVE HUNDRED FIVE and none/100 (\$129,505.00) DOLLARS**, which amount consists of the sum of (i) an "Escrow Deposit" in the amount of **EIGHTY-FIVE THOUSAND and none/100 (\$85,000.00) DOLLARS**, which amount is intended to cover any "U&O Costs" (as hereinafter defined) that remain outstanding after the Termination Date, and (ii) an "Estimated Delivery Cost Deposit" in the amount of **FORTY-FOUR THOUSAND FIVE HUNDRED FIVE and none/100 (\$44,505.00) DOLLARS**, which amount represents the Delivery Costs (as such term is defined in Paragraph 2 hereof) unknown at the Commencement Date and not available at the time of the giving of the Delivery Cost Notice.

The Escrow Deposit and the Estimated Delivery Cost Deposit shall be retained by the Authority in the Authority's interest bearing NJ Cash Management Fund in accordance with the terms and conditions set forth in this Paragraph 24. The Authority makes no representations as to any rate of interest other than what the actual account bears.

(b) (i) CCIA understands and agrees that the Escrow Deposit is being held in order to secure the obligation of CCIA to pay for all costs arising out of the permission granted hereunder to use and occupy the Property (hereinafter collectively called the "U&O Costs"). CCIA further understands and agrees the U&O Costs include, but are not limited to, the following: (1) payment of any sum(s) due/owing to the Authority hereunder including any Use Fees and/or Additional Fees; (2) payment of any outstanding utility charges due; (3) payment of any costs incurred by the Authority in order to remove any property of CCIA abandoned at the Property; (4) the amount of reasonable attorney fees incurred by the Authority associated with the enforcement of the terms, provisions and conditions of this Agreement; (5) satisfaction of amounts due from CCIA attributable to the indemnity and hold harmless obligations hereof; (6) payment of any sum as to which CCIA is in default or for any sum which the Authority may

expend or be required to expend by reason CCIA's default under this Agreement; and (7) payment of all costs incurred by the Authority after CCIA vacates the Property arising in connection with costs incurred to restore the Property to its condition as of the Commencement Date as documented in the Site Delivery Conditions Report, including the cost of obtaining a Site Vacation Conditions Report.

(ii) The Escrow Deposit shall be drawn down upon by the Authority as follows:

(1) With respect to Additional Fees (as defined in Paragraph 6(b) hereof) and/or work performed, services provided and/or materials furnished to the Property that constitute U&O Costs (as defined in Paragraph 24(b) hereof), the Authority shall forward to CCIA invoices approved and processed for payment by the Authority, and CCIA shall reimburse the Authority the amount referenced in such invoice within sixty (60) days of delivery of said invoice to CCIA. To the extent that CCIA shall not reimburse the Authority the amount paid under said invoice within said sixty (60) day period, the Authority shall withdraw such amounts from the Escrow Deposit as provided in subparagraph (2) below;

(2) With respect to Use Fees outstanding and payable hereunder the Authority shall be entitled to withdraw from the Escrow Deposit amounts due to the Authority that remain unpaid by CCIA for more than thirty (30) days after a written demand therefor.

At all times during the period this Agreement remains in effect, the Authority shall have recourse to the Escrow Deposit and shall make payments from the Escrow Deposit for the U&O Costs as necessary or required. The Authority shall notify CCIA of the making of any payment using the Escrow Deposit. Such notice shall be in writing sent by overnight mail carrier, and shall, when practicable, include a copy of the invoice and/or bill with respect to such payment. CCIA shall, within five (5) days from receipt of such notice, restore the Escrow Deposit to its original amount.

(c) CCIA and the Authority understand and agree that the Estimated Delivery Cost Deposit represents an estimate of the Delivery Costs (as such term is defined in Paragraph 2 hereof) unknown at the time of the commencement of this Agreement and not available at the time of the giving of the Delivery Cost Notice, and is being held in order to secure the obligation of CCIA to pay the Delivery Costs in connection with the license to use the Property granted hereunder. The Authority shall pay invoices attributable to the Delivery Costs, as finally determined, from the Estimated Delivery Cost Deposit. At such time as the actual Delivery Costs are known, to the extent the same shall be less than the Estimated Delivery Cost Deposit, the Authority shall promptly refund to CCIA the excess. To the extent the Delivery Costs shall exceed the Estimated Delivery Cost Deposit, CCIA shall pay the difference to the Authority as an Additional Fee hereunder.

(d) As soon as practicable after the Termination Date and delivery of the Property to the Authority the Authority shall procure a Site Vacation Conditions Report and complete any work determined to be necessary in order to restore the Property to its condition as of the Commencement Date as documented in the Site Delivery Conditions Report (the "Restoration Work"). Upon completion of the Restoration Work, and a final determination of the U&O Costs, the Escrow Deposit, less the amount of the U&O Costs shall be released to CCIA. If the

amount of the U&O Costs and the cost of the Restoration Work shall exceed the Escrow Deposit, CCIA shall reimburse the Authority for such additional costs within thirty (30) days of written demand therefor.

(e) CCIA understands, acknowledges and agrees that to the extent the amount of the Escrow Deposit shall be insufficient to cover amounts due from CCIA to the Authority hereunder, CCIA shall remain liable for any balance.

25. Option Area

(a) CCIA understands that the portion of the Site not included in the Property is in the process of being prepared so that the Site will be "shovel ready" for construction of the Project. The Authority agrees that if any portion of the Site shall become available for use by CCIA and if the Authority, in its sole discretion, determines that the use thereof for the purposes described in Paragraph 3 hereof will be without risk to the Authority's scheduled construction of the Project and the shovel ready condition of the Site, then, provided that (i) CCIA is not in violation of any of the terms, provisions or conditions hereof; (ii) the commencement of the construction of the Project will not be impacted; and (iii) CCIA shall pay all costs associated with delivering such portion of the Site (hereinafter called "Added Property") including without limitation the costs of refencing and the preparation of a Site Delivery Conditions Report with respect to the Added Property, the Authority will offer CCIA the right to include the Added Property within the Property upon all of the terms and conditions of this Agreement as if the Added Property had been part of the Property as of the Commencement Date except that the Use Fee payable under Paragraph 6 hereof shall be increased by the Use Fee attributable to the Added Property as determined by the Authority and set forth in the "Added Property Notice", as such term is defined below.

(b) The Authority shall make an offer of Added Property to CCIA by written notice to CCIA (the "Added Property Notice") which shall set forth (i) a description of the Added Property; (ii) a description of use restrictions with respect to such Added Property based on site preparation performed to put the Added Property in "shovel ready" condition; (iii) the amount of the Use Fee that is attributable to the Added Property; (iv) the date upon which the Added Property will be available for occupancy by CCIA (the "Added Property Commencement Date"); (v) the amount, if any, by which the Escrow Amount shall be increased; and (vi) a request for a check in the amount of the costs associated with making the Added Property available to CCIA ("Added Property Delivery Costs"). CCIA shall have the right to accept the Added Property described in such offer by return notice given within ten (10) days after receipt of such offer from the Authority together with payment of the Added Property Delivery Costs. CCIA shall accept the Added Property "as is" on the Added Property Commencement Date. Promptly following CCIA's notice accepting any Added Property, the parties hereto shall enter into a written agreement modifying this Agreement accordingly.

(c) If CCIA does not accept an offer that may be made by the Authority pursuant hereto, the Authority shall be under no further obligation to CCIA with respect to the Added Property described in such offer and the Authority shall be under no further obligation to make any future offer to CCIA under this Paragraph 25.

26. No Recording.

Neither this Agreement nor any memorandum thereof shall be recorded by either party.

27. Binding Agreement.

(a) Each party executing and delivering this Agreement has due and proper authority to consummate this transaction by the execution and delivery of the same, and to carry out its obligations hereunder without joinder or consent of any other person, entity or governmental body or agency or court order.

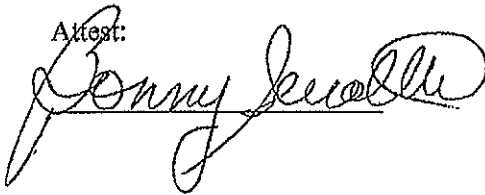
(b) This Agreement shall be binding upon the Authority and CCIA as well as their respective heirs, executors, administrators, successors and assigns.

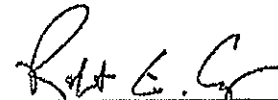
28. Entire Agreement.

This Agreement shall constitute the entire Agreement between the parties and be governed by and interpreted in accordance with the laws of the State of New Jersey.

IN WITNESS WHEREOF, the parties hereto, duly authorized, have executed this Agreement the day and year above written.

NEW JERSEY SCHOOLS DEVELOPMENT
AUTHORITY

Attest:


By: 
Robert Carney, Program Director

CAMDEN COUNTY IMPROVEMENT
AUTHORITY

Attest:

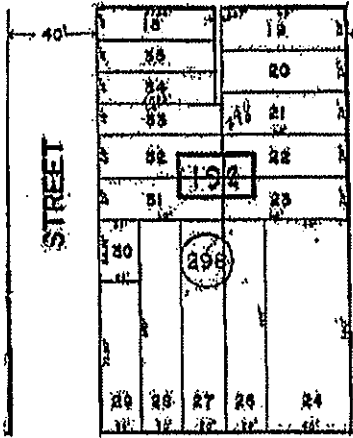
Maryanne Manning

By: 
James P. Blanda, Executive Director

LIST OF EXHIBITS

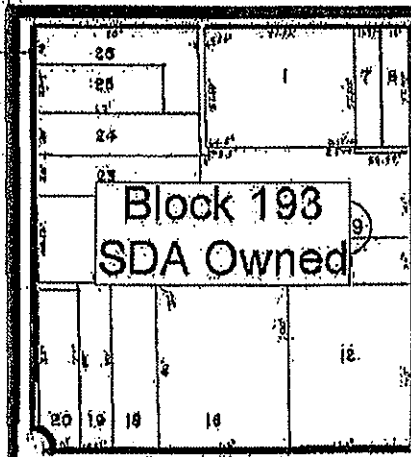
- Exhibit A: Tax Map Identification of Site
- Exhibit B-1: Property Metes and Bounds
- Exhibit B-2: Property Survey
- Exhibit C: Soil Erosion and Sediment Control Plan-SS001 (through revisions 4 of 7/19/10)
- Exhibit D: Soil Erosion and Sediment Control Permit and Associated NJPDES General Permit No. NJG0088323

WASHINGTON

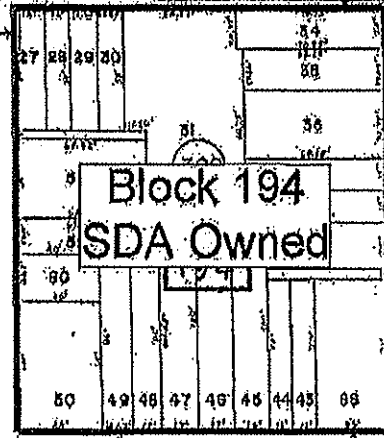


STREET

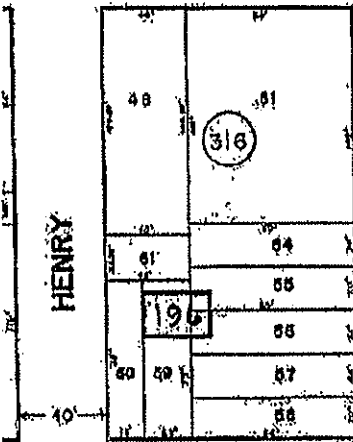
STREET



STREET

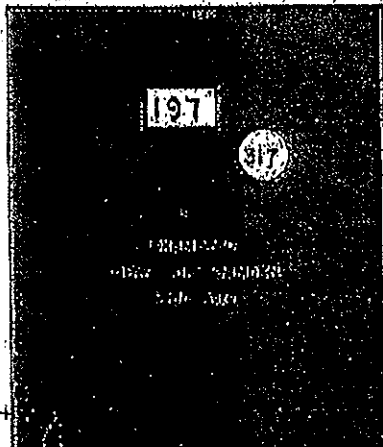


BERKLEY

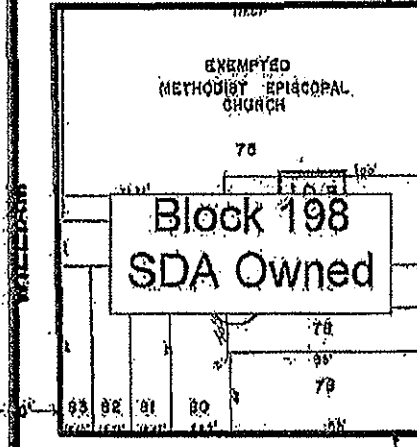


HENRY

FIFTH

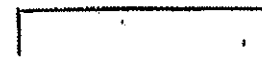


STREET



BROADWAY

CLINTON



SEE SHEET

Camden
Lanning
Square
SITE
EXHIBIT A

CITY
OAA
SCALE:
CHARLES

REMINGTON ENGINEERS, INC.
PENNSAUCUN, NEW JERSEY



27 October, 2010
92063

**USE AND OCCUPANCY AREA BOUNDARY
PORTION OF BLOCK 193
FIFTH & WASHINGTON STREETS
CITY OF CAMDEN, CAMDEN COUNTY
NEW JERSEY**

ALL THAT CERTAIN use and occupancy area, being SITUATE in city of Camden, Camden County and the State of New Jersey as shown and described according to a plan entitled "Use and Occupancy Area Boundary Survey, Lanning Square Elementary School", prepared by Langan Engineering & Environmental Services, dated 27 October, 2010, Drawing number 03.02, and being more particularly described as follows; to wit,

Beginning at the point of intersection of the southerly right-of-way line of Washington Street (40 feet wide) and the easterly right-of-way line of Fifth Street (60' wide), thence extending from said beginning point;

- 1) Along the said right-of-way line of Washington Street, South $88^{\circ}28'33''$ East, a
- 2) distance of 216.22 feet; thence,
- 3) Leaving said line and extending through a portion of Block 193, South $01^{\circ}27'54''$ West, a distance of 152.28 feet; thence,
- 4) Still through the same, North $88^{\circ}34'08''$ West, a distance of 216.28 feet to a point in the aforementioned easterly right-of-way line of Fifth Street; thence,
- 5) Along said line of Fifth Street, North $01^{\circ}29'16''$ East, a distance of 152.76 feet to the first mentioned point and place of BEGINNING.

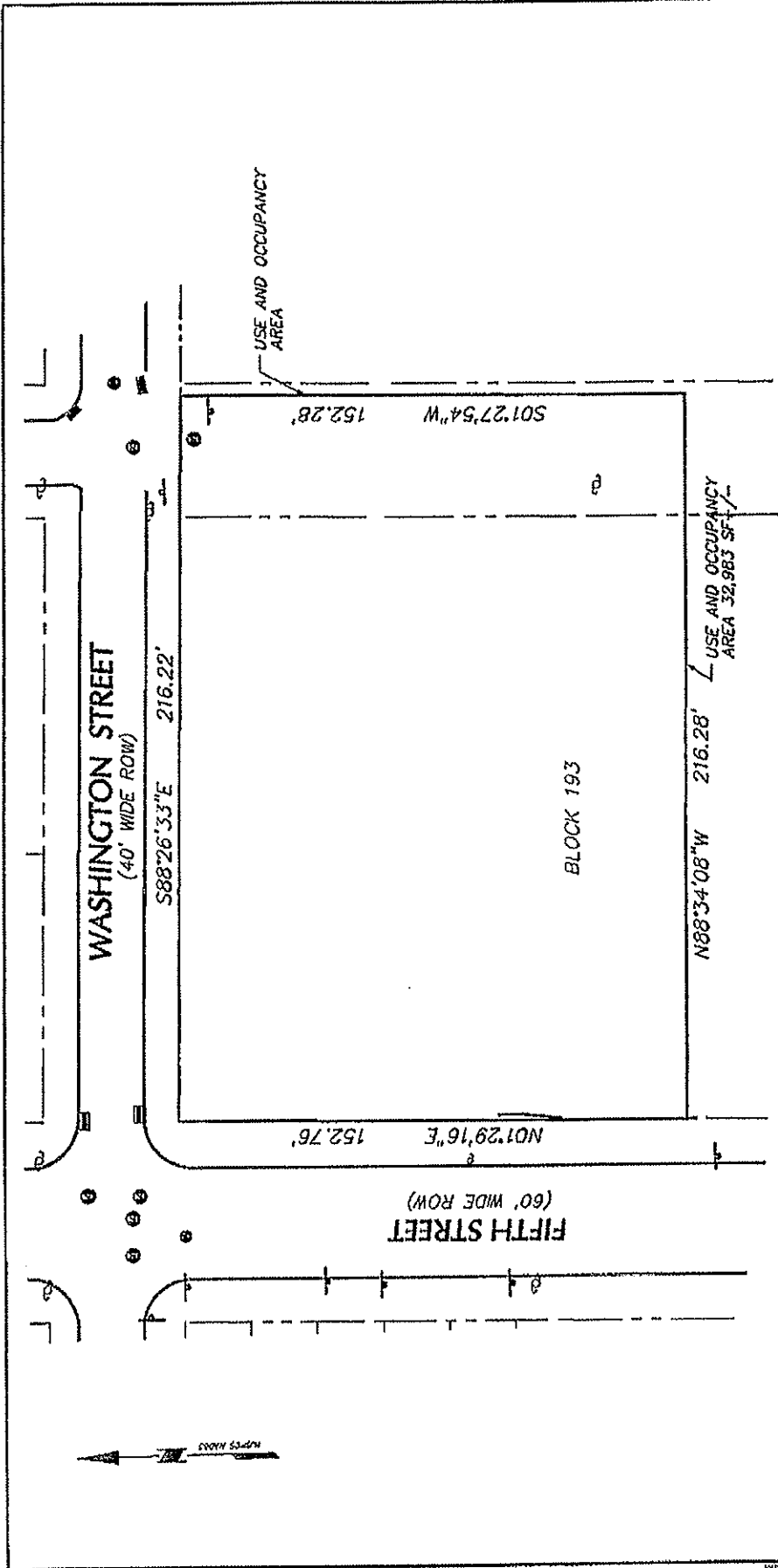
Encompassing an area of 32,883 square feet of land, more or less.

Joseph E. Romana
Professional Land Surveyor
New Jersey License No. 36273

N.J. Certificate of Authorization No: 246627936400

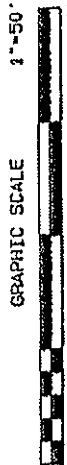
S:\data\00920630\Survey Data - 00920630\Office Data\Descriptions\92063 Lessa Area Boundary.docx

EXHIBIT B-1



NOTES

1. MERIDIAN IS REFERENCED TO NEW JERSEY STATE PLANE COORDINATE SYSTEM, NAD 83 AS PER GPS SURVEY METHODS.
2. VERTICAL DATA SHOWN IS BASED ON HAND 88 AS PER GPS SURVEY METHODS.



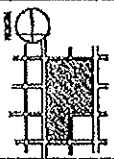
LANGAN CONSULTING & ENVIRONMENTAL SERVICES 200 SOUTH ST. SUITE 200, BRIDGE PLAZA PHILADELPHIA, PENNSYLVANIA 19106-3300 TEL: 215-381-1000 FAX: 215-381-1001 WWW.LANGAN.COM	Drawing Title USE AND OCCUPANCY AREA BOUNDARY SURVEY	Project LANNING SQUARE ELEMENTARY SCHOOL CITY OF CAMDEN CAMDEN COUNTY NEW JERSEY Project No. 92063 Date 10-27-10 Scale 1"=50' Job No. 03.02
	Date DATE PROFESSIONAL LAND SURVEYOR NJ LIC. No. 36273	S:\data3\009206301\Survey Data - 089206301\Terrmodel\Existing\92063 Lease area lppa.pro Oct 27.2010

EXHIBIT B-2

NK

PROVIDED FOR THE ARCHITECT'S USE ONLY. THIS DRAWING IS NOT TO BE USED FOR CONSTRUCTION. ANY CHANGES TO THIS DRAWING MUST BE MADE BY THE ARCHITECT. THE ARCHITECT'S OFFICE IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION PROVIDED IN THIS DRAWING.

**LANDING SQUARE
FAMILY STORAGE**
1000 West 10th Street
Seattle, WA 98101
Phone: 206-462-1000
Fax: 206-462-1001
www.landing-square.com



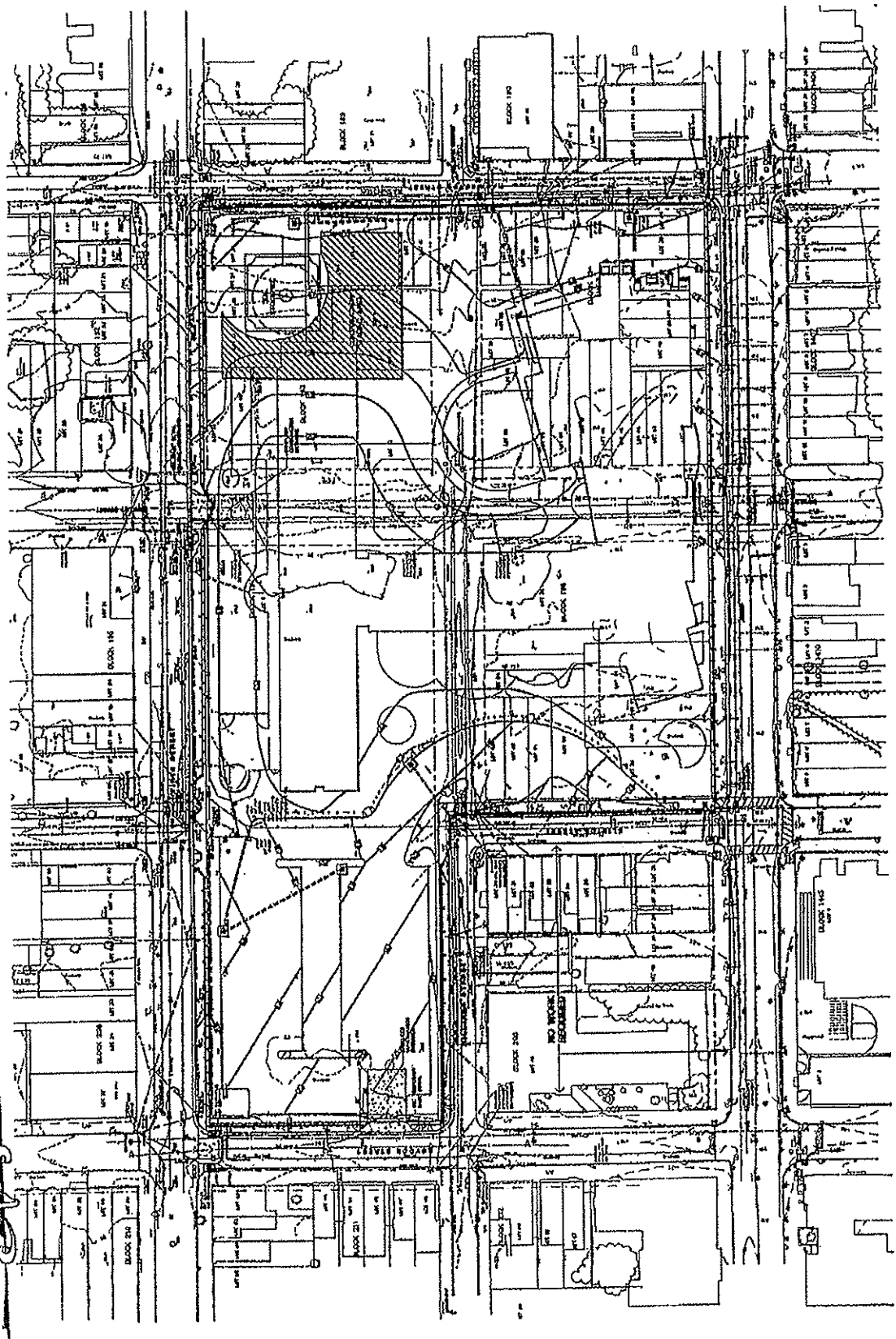
SCIENCE & TECHNOLOGY CENTER
1000 West 10th Street
Seattle, WA 98101
Phone: 206-462-1000
Fax: 206-462-1001
www.science-technology-center.com

PROFESSIONAL LICENSE
Architect
No. 10000
State of Washington
Date of Issue: 10/1/00
Expiration Date: 10/1/05

**SOIL EROSION AND
SEDIMENT CONTROL
PLAN**

NO. 10000
STATE OF WASHINGTON
DATE OF ISSUE: 10/1/00
EXPIRATION DATE: 10/1/05

SS001
PROJECT NUMBER: SS001



PROPOSED LAYOUT
EXISTING LAYOUT
EXISTING BUILDING FOOTPRINT
EXISTING PAVEMENT
EXISTING DRIVEWAY
EXISTING SIDEWALK
EXISTING CURB
EXISTING UTILITY LINES
EXISTING TREE
EXISTING LANDSCAPE
EXISTING FENCE
EXISTING SIGN
EXISTING LIGHT FIXTURE
EXISTING ELECTRICAL
EXISTING MECHANICAL
EXISTING PLUMBING
EXISTING STRUCTURE
EXISTING CONCRETE
EXISTING ASPHALT
EXISTING GRAVEL
EXISTING SOIL
EXISTING VEGETATION
EXISTING WATER

CHART 1



SCALE: 1" = 40'



Camden County Soil Conservation District

423 Commerce Lane, Suite 1
W. Berlin, NJ 08091
Phone (856) 767-8299 - Fax (856) 767-1878
coacd@jersey.net

CERTIFICATION

CAMDEN BOARD OF EDUCATION
201 NORTH FRONT STREET
CAMDEN NJ 08102

Enclosed is a copy of your certified Soil Erosion and Sediment Control Plan for the referenced project signed by a member of the District Board of Supervisors pursuant to the New Jersey Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et. seq., Chapter 251, P.L. 1975.

CERTIFICATION DATE: 09-30-09

EXPIRATION DATE: 03-31-13

PROJECT: LANNING SQ. ELEM. SCH.-PH2 DEM. & UTL. RELOCATION
Application #2009-5589
Block 193, 194, 197 & 198 Lot ALL LOTS INCLUDED
5TH, BERKLEY, WILLIAM & WASHINGTON STS.
Camden City

The requirements of this certification are as follows:

1. The District must be notified 72 hours in advance of start of any land disturbance.
2. Certified copy of the Soil Erosion and Sediment Control Plan must be on site.
3. All revisions and municipal renewals of this project will require resubmission and approval by the District.
4. Any conveyance of the project (or portion thereof) will transfer full responsibility for compliance to subsequent owner(s). The District must be notified in writing of any change of ownership.
5. No Certificates of Occupancy, temporary or permanent, will be issued by a municipality until a Certificate of Compliance is issued by the District.

This certification is limited to the controls specified in this referenced plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality or other controlling agency.

Conditions:

Distribution: Applicant
Construction Official
Municipal Engineer
Engineer
District

EXHIBIT D

Camden County Soil Conservation District
 128 Commerce Lane, Suite 1
 East Berlin, NJ 08091
 607-767-6299 (phone)
 607-767-1676 (fax)



For District Use Only

Application Number	5589-GA-09
RECEIVED	9-24-09
COMMERCIAL	
CERTIFIED	9-30-09

APPLICATION FOR SOIL EROSION AND SEDIMENT CONTROL PLAN CERTIFICATION

The enclosed soil erosion and sediment control plan and supporting information are submitted for certification pursuant to the Soil Erosion and Sediment Control Act, Chapter 251, P.L. 1975 as amended (N.J.S.A. 4:24-39 et. seq.) An application for certification of a soil erosion and sediment control plan shall include the items listed on the reverse side of this form.

Name of Project Lanning Sq Elem. School Phase 2 Demolition and Utility Relocation		Project Location: Municipality City of Camden	
Project Street Address 5th, Berkley, William and Washington Sts.		Block 193, 194, 197 & 198	Lot All lots included
Project Owner(s) Name Camden Board of Education		Phone # (856) 888-2823	Fax #
Project Owner(s) Street Address (No P.O. Box Numbers) 201 North Front Street		City Camden	State NJ
Total Area of Project (Acres) 3.9	Total Area of Land to be Disturbed (Acres) 3.9	No. Dwelling or other Units 0	Fee \$ 1,600.00**
Plans Prepared by Langan Engineering and Environmental Services, Inc.		Phone # (609) 888-2810	Fax # (609) 888-2818
Street Address 50 West State Street, Suite 1002		City Trenton	State NJ
		Zip 08608	
<small>(Engineering related items of the Soil Erosion and Sediment Control Plan MUST be prepared by or under the direction of and be sealed by a Professional Engineer or Architect licensed in the State of New Jersey. In accordance with NJAC 13:27-6.1 et. seq.)</small>			
Agent Responsible During Construction David Benfer		Direct 943-4760	
Street Address One West State Street			
City Camden	State NJ	Zip 08101	Phone (609) 943-6955
		Fax #	

The applicant hereby certifies that all soil erosion and sediment control measures are designed in accordance with current standards for soil erosion and sediment control in New Jersey and will be installed in accordance with these standards and the plan as approved by the Soil Conservation District and agrees as follows:

- To notify the District in writing at least 48 hours in advance of any land disturbance activity. Failure to provide such notification may result in additional inspection fees.
- To notify the District upon completion of the Project (Note: No certificate of occupancy can be granted until a report of compliance is issued by the District).
- To maintain a copy of the certified plan on the project site during construction.
- To allow District agents to go upon project lands for inspection.
- That any conveyance of this project or portion thereof prior to its completion will transfer full responsibility for compliance with the certified plan to any subsequent owners.
- To comply with all terms and conditions of this application and certified plan including payment of all fees prescribed by the district fee schedule hereby incorporated by reference.

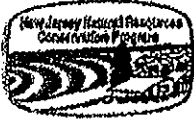
The applicant hereby acknowledges that structural measures contained in the Soil Erosion and Sediment Control Plan are reviewed for adequacy to reduce off-site soil erosion and sedimentation and not for adequacy of structural design. The applicant shall retain full responsibility for any damages which may result from any construction activity notwithstanding district certification of the subject soil erosion and sediment control plan. It is understood that approval of the plan submitted with this application shall be valid only for the duration of the initial project approval granted by the municipality. All municipal renewals of this project will require submission and approval by the district. In no case shall the approval extend beyond three and one half years at which time resubmission and certification will be required. Soil Erosion and Sediment Control Plan certification is limited to the controls specified in the plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality or other controlling agency.

1. Applicant Certification <i>David Benfer</i> Signature <i>David Benfer</i> Applicant Name (Print)	<u>9/18/09</u> Date	3. Plan determined complete: <i>Christy Williams</i> Signature of District Official	<u>9-29-09</u> Date
2. Receipt of fee, plan and supporting documents is hereby acknowledged: <i>David Benfer</i> Signature of District Official	<u>9/24/09</u> Date	4. Plan certified, denied or other actions noted above. Special Remarks: <i>John H. ...</i> Signature of District Official	<u>9/30/09</u> Date

**Application Fee = Certification Fee + Inspection Fee per Acre x # of Acres = \$700.00 + \$200.00 x (4 acres) = \$1,600.00

AUTHORIZATION TO DISCHARGE STORMWATER

N.J. Department of Environmental Protection
 Bureau of Nonpoint Pollution Control
In cooperation with the
 N.J. Department of Agriculture
 State Soil Conservation Committee
 and Soil Conservation Districts



NJPDES General Permit No. NJG0088323

Stormwater Discharge Associated with Construction Activity

Is this a Ch. 251 Project? Yes, App. # <u>5589-CA-09</u> ; SCD RFA# <u>04-08-00-0011</u>	
1. Project or Facility Name and Address <u>LANNING SQUARE ELEMENTARY SCHOOL PHASE 2 DEMOLITION AND UTILITY RELOCATION</u> <u>5TH, BERKLEY, WILLIAM AND WASHINGTON STS.</u> <u>CITY OF CAMDEN, CAMDEN COUNTY</u>	
2. Permittee Name and Address <u>CAMDEN BOARD OF EDUCATION</u> <u>201 NORTH FRONT STREET</u> <u>CAMDEN NJ 08102</u>	3. Owner Name and Address <u>SAME AS #2</u>
4. Proposed Land Use (check appropriate category(ies)): Residential Dwelling <input type="checkbox"/> Single-Family <input type="checkbox"/> Multi-Family <input type="checkbox"/> Commercial Facility <input type="checkbox"/> Industrial Facility <input type="checkbox"/> Public School, Religious or Charitable Institutions <input checked="" type="checkbox"/> Other (specify) <input type="checkbox"/> _____	
Issuance Date <u>8-30-09</u> Expiration Date _____	
Your Request for Authorization under NJPDES General Permit No. NJG0088323 has been certified in accordance with the provisions of N.J.A.C. 7:27A and the New Jersey Stormwater Permitting Program in coordination with the New Jersey Department of Agriculture, the State Soil Conservation Committee and the Soil Conservation District.	
<u>Barry Chalofsky</u> Barry Chalofsky, P.P. Chief Bureau of Nonpoint Pollution Control New Jersey Department of Environmental Protection CERTIFIED BY: <u>[Signature]</u> Signature DISTRICT SUPERVISOR Title <u>8/30/09</u> Date	FOR DISTRICT USE ONLY NJ Natural Resources Conservation Program Expiration of Authorization to Discharge Stormwater Reason for Expiration: <input type="checkbox"/> Project Completed (Final Report of Compliance Issued) <input type="checkbox"/> Application Withdrawn by Applicant <input type="checkbox"/> Application Denied by District or SSSC <input type="checkbox"/> Project SSSC Plan Certification Expired Date of Expiration _____ Authorized by _____ District Official