

**SCHOOL BOARD OF PALM BEACH COUNTY
DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENT
APPENDIX A
TO THE SECTION 125 FLEXIBLE BENEFITS PLAN**

This Document is effective 1/1/2013.

Amended and Restated

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PREAMBLE

Effective as of the date set forth herein, School Board of Palm Beach County established this Dependent Care Flexible Spending Arrangement (the Dependent Care FSA) to help provide dependent day care assistance for those Employees who participate in the Employer's Cafeteria Plan ("Plan") and who, pursuant to the election procedures set forth in the Plan, choose to make contributions to a Dependent Care Flexible Spending Account established pursuant to this Plan. This Dependent Care FSA is intended to provide reimbursement of certain Eligible Employment Related Expenses incurred by the Participant for care of a Qualifying Individual. The Employer intends that the Dependent Care FSA qualify as a Code Section 129 dependent care assistance plan, and that the benefits provided under the Dependent Care FSA be eligible for exclusion from the Participant's income for federal income tax purposes under Section 129 of the Code. This Dependent Care FSA is a component of, and incorporated by reference into, the Section 125 Flexible Benefits Plan ("Cafeteria Plan") and Articles VI, IX and X of the Cafeteria Plan document apply also to this Dependent Care FSA. If there is any conflict between this document and the Cafeteria Plan document with regard to Dependent Care FSA benefits, this document shall control.

School Board of Palm Beach County
Dependent Care Flexible Spending Arrangement

ARTICLE I - DEFINITIONS

Unless otherwise specified, terms that are capitalized in this Appendix to the Cafeteria Plan have the same meaning as the defined terms in the Cafeteria Plan. The definitions of terms defined in this Appendix, but not defined in the Cafeteria Plan, shall be applicable only with respect to this Appendix. To the extent a term is defined both in the Cafeteria Plan and in this Appendix, the term as defined in the Cafeteria Plan shall govern the interpretation of the Cafeteria Plan and the term as defined in this Appendix shall govern the interpretation of this Dependent Care FSA.

1.01 Dependent

"Dependent" means any individual who is a tax dependent of the Participant as defined in Code Section 152 (determined without regard to subsections 152(b)(1), 152(b)(2) and 152(d)(1)(B)) except that a child with respect to whom Code Section 21(e)(5) applies who is in the custody of the parent for the longest period during the year shall be considered a dependent of such custodial parent for purposes of this Dependent Care FSA.

1.02 Dependent Care Reimbursement

"Dependent Care Reimbursement" shall have the meaning assigned to it by Section 4.01 of this Dependent Care FSA.

1.03 Earned Income

"Earned Income" means all income derived from wages, salaries, tips, self-employment, and other Compensation (such as disability or wage continuation benefits), but only if such amounts are includible in gross income for the taxable year. Earned income does not include any other amounts excluded from earned income under Code Section 32(c)(2), such as amounts received under a pension or annuity, or pursuant to workers' compensation.

1.04 Effective Date

"Effective Date" of this Dependent Care FSA means 1/1/2006.

1.05 Eligible Employment Related Expenses

"Eligible Employment Related Expenses" means those expenses that would be considered to be employment-related expenses under Section 21(b)(2) of the Code (relating to expenses for household and dependent care services necessary for gainful employment) if paid for by the Employee to provide Qualifying Services other than amounts paid to:

- (a) an individual with respect to whom a Dependent deduction is allowable under Code Sec. 151(c) to the Participant or his Spouse;
- (b) the Participant's Spouse; or
- (c) a child (as defined in Code Section 152(f)(1)) of the Participant who is under 19 years of age at the end of the taxable year in which the expenses were incurred.

1.06 Highly Compensated Individual

"Highly Compensated Individual" means an individual defined under Code Section 414(q), as amended, as a "highly compensated individual" or a "highly compensated employee."

1.07 Reimbursement Account(s)

"Reimbursement Account(s)" shall be the funding mechanism by which amounts are withheld from an Employee's Compensation and/or Non-elective Contributions are made and retained for future Dependent Care Reimbursement (as defined in Section 1.02 herein). No money shall actually be allocated to any individual Participant Account(s); any such Account(s) shall be of a memorandum nature, maintained by the Administrator for accounting purposes, and shall not be representative of any identifiable trust assets. No interest will be credited to or paid on amounts credited to the Participant Account(s).

1.08 Qualifying Individual

"Qualifying Individual" means:

- (a) a Qualifying Child as defined in Code Section 152(a)(1) who is under the age of thirteen (13) and except that a child of divorced parents will be considered a Qualifying Individual of the parent with whom the child resides with for the longest portion of the year without regard to who is entitled to the exemption);
- (b) a Dependent of a Participant who is mentally or physically incapable of caring for himself or herself and who has the same principal place of abode as the employee for more than half the year; or
- (c) the Spouse of a Participant who is mentally or physically incapable of caring for himself or herself and who has the same principal place of abode as the employee for more than half the year.

1.09 Qualifying Services

"Qualifying Services" means services relating to the care of a Qualifying Individual that enable the Participant or his Spouse to remain gainfully employed which are performed:

- (a) in the Participant's home; or
- (b) outside the Participant's home for (1) the care of a Dependent of the Participant who is under age 13, or (2) the care of any other Qualifying Individual who resides at least eight (8) hours per day in the Participant's household. If expenses are incurred for services provided by a dependent care center (i.e., a facility that provides care for more than 6 individuals not residing at the facility), the center must comply with all applicable state and local laws and regulations.

ARTICLE II - ELIGIBILITY AND PARTICIPATION

2.01 Eligibility to Participate

Each Employee who satisfies the eligibility requirements set forth in the SPD shall be eligible to participate in this Dependent Care FSA as of the Dependent Care Eligibility Date set forth in the SPD and enrollment material.

2.02 Termination of Participation

Participation shall terminate on the earliest of the dates set forth in the SPD.

2.03 Qualifying Leave Under Family and Medical Leave Act

Notwithstanding any provision to the contrary in this Dependent Care FSA, if a Participant goes on a qualifying leave under the Family and Medical Leave Act of 1993 (the "FMLA"), then to the extent required by the FMLA, the Participant will be entitled to continue the Participant's coverage under this Dependent Care FSA in accordance with the SPD. The requirements for continuing coverage, procedures for FMLA leave and payment option(s) provided by the Employer (as described above) will be set forth in the SPD and will be administered in accordance with the regulations issued under Code Section 125 and in accordance with the FMLA.

ARTICLE III - ELECTION TO PARTICIPATE

3.01 Initial Election Period

- (a) **Currently Eligible Employees.** An Employee who is eligible to become a Participant in this Dependent Care FSA as of the Effective Date must complete, sign and file a Salary Reduction Agreement with the Plan Administrator (or its designated Benefit Administrator as set forth on the Salary Reduction Agreement) during the election period (as specified by the Plan Administrator) immediately preceding the Effective Date of the Dependent Care FSA in order to become a Participant on the Effective Date. The elections made by the Participant on this initial Salary Reduction Agreement shall be effective, subject to Section 3.02, for the Plan Year beginning on the Effective Date.
- (b) **New Employees and Employees Who Have Not Yet Satisfied The Dependent Care FSA's Waiting Period.** An Employee who becomes eligible to become a Participant in this Dependent Care FSA after the Effective Date must complete, sign and file a Salary Reduction Agreement with the Plan Administrator (or its designated Benefit Administrator as set forth on the Salary Reduction Agreement) during the Initial Election Period set forth in the SPD or the enrollment material. Participation will commence under this Dependent Care FSA as set forth in the SPD.
- (c) **Failure to Elect.** An eligible Employee who fails to complete, sign and file a Salary Reduction Agreement in accordance with paragraph (a) or (b) above during an initial election period may become a Participant on a later date in accordance with Section 3.02 or 3.03.

3.02 Annual Election Period

Each Employee who is a Participant in this Dependent Care FSA or who is eligible to become a Participant in this Dependent Care FSA shall be notified, prior to each Anniversary Date of this Dependent Care FSA, of his right to become a Participant in this Dependent Care FSA, to continue participation in this Dependent Care FSA, or to modify or to cease participation in this Dependent Care FSA, and shall be given a reasonable period of time in which to exercise such right: such period of time shall be known as the Annual Election Period. The date on which the Annual Election Period commences and ends will be set forth in the SPD or the enrollment material. An election is made during the Annual Election Period in the manner set forth in the SPD. The consequences of failing to make an election during the Annual Election Period will be set forth in the SPD.

3.03 Change of Elections

A Participant shall not make any changes to his or her election except for election changes permitted under the SPD, and for changes made during the Annual Election Period, changes caused by termination of employment or cessation of eligibility and changes pursuant to the Family and Medical Leave Act. All election changes shall be effective on a prospective basis only following the date that the election change was filed as determined by the Plan Administrator.

3.04 Impact of Termination of Employment on Election or Cessation of Eligibility

Termination of employment or cessation of eligibility shall automatically revoke any Salary Reduction Agreement. Except as provided below, if revocation occurs under this Section 3.04, no new election with respect to the Dependent Care FSA may be made during the remainder of the Plan Year except as set forth in the SPD.

3.05 Reduction of Certain Elections to Prevent Discrimination

If the Plan Administrator determines, before or during any Plan Year, that the Dependent Care FSA may fail to satisfy for such Plan Year any requirement imposed by the Code or any limitation on Highly Compensated Individuals, the Plan Administrator shall take such action(s) as he deems appropriate, under rules uniformly applicable to similarly situated Participants, to assure compliance with such requirement or limitation.

ARTICLE IV - REIMBURSEMENTS

4.01 Dependent Care Reimbursement

To the extent offered under the Plan, each Participant's Dependent Care FSA will be credited for Dependent Care Reimbursement with amounts withheld from the Participant's Compensation, and any Nonelective Contributions allocated thereto by the Employer or where applicable, the Participant. The Dependent Care Account will be debited for Dependent Care Reimbursements disbursed to the Participant in accordance with Article V of this document. In the event that the amount in the Account is less than the amount of reimbursable claims at any time during the Plan Year, the excess part of the claim will be carried over into following months within the same Plan Year, to be paid out as the Dependent Care Account balance becomes adequate. In no event will the amount of Dependent Care Reimbursements exceed the amount credited to the Dependent Care Account for any Plan Year. Any amount allocated to the Dependent Care Account shall be forfeited by the Participant and restored to the Employer if it has not been applied by the end of the Run-out Period set forth in the SPD to provide Dependent Care Reimbursement for Eligible Day Care Expenses incurred during the Plan Year. The Employer has the discretion to establish a grace period following the end of the Plan Year during which amounts unused as of the end of the Plan Year may be used to reimburse Eligible Day Care Expenses incurred during the grace period. In no event can the grace period exceed two (2) months and fifteen (15) days following the end of the Plan Year. All amounts allocated to the Dependent Care FSA that are not used to reimburse Eligible Day Care Expenses incurred during the Plan year and/or the Grace Period shall be forfeited. Amounts so forfeited shall be used in a manner that is not prohibited by applicable federal or state law. The maximum annual reimbursement amount shall be set forth in the SPD. The Employer may establish a minimum annual reimbursement amount as set forth in the SPD.

4.02 Receiving Dependent Care Reimbursement

Payment shall be made to the Participant in cash as reimbursement for Eligible Employment Related Expenses incurred by him while a Participant, during the Plan Year for which the

Participant's election is effective, provided that the substantiation requirements of Section 4.03 herein are satisfied.

4.03 Substantiation of Expenses

Each Participant must submit an expense for reimbursement in accordance with the terms of the SPD and provide the required substantiation set forth in the SPD or as otherwise requested by the Plan Administrator (or its designee).

4.04 Repayment of Excess Reimbursements

If, as of the end of any Plan Year, it is determined that a Participant has received payments under this Dependent Care FSA that exceed the amount of Eligible Employment Related Expenses that have been substantiated by such Participant during the Plan Year as required by Section 4.03 herein or reimbursements have been made in error (e.g. reimbursements were made for expenses incurred for the care of an individual who was not a qualifying individual), the Plan Administrator (or its designee) shall recoup the excess reimbursements in one or more of the following ways: (i) The Plan Administrator (or its designee) shall give the Participant prompt written notice of any such excess amount, and the Participant shall repay the amount of such excess to the Employer within sixty (60) days of receipt of such notification. (ii) The Plan Administrator (or its designee) may offset the excess reimbursement against any other Eligible Employment Related Expenses submitted for reimbursement (regardless of the Plan Year in which submitted) (iii) withhold such amounts from the Participant's pay (to the extent permitted under applicable law). If the Plan Administrator (or its designee) is unable to recoup the excess reimbursement through the means set forth in (i) – (iii), the Plan Administrator (or its designee) will notify the Employer that the funds could not be recouped and the Employer will treat the excess reimbursement as it would any other bad business debt.

4.05 Reimbursement Following Cessation of Participation

Participants in the Dependent Care FSA may submit claims for reimbursement for Eligible Employment Related Expenses incurred during the Plan Year and before the date of participation in the Dependent Care FSA ceases so long as the claim is submitted prior to the end of the run out period set forth in the SPD. To the extent set forth in the SPD, Participants may submit claims for reimbursement of Eligible Employment-Related Expenses incurred during the Plan Year and after they cease participation so long as such claims are submitted prior to the end of the run out period. Any unused reimbursement benefits at the expiration of the Plan Year (as set forth in the SPD) shall be treated in accordance with Section 4.01.

4.06 Disbursement Reports

The Plan Administrator (or its designee) shall issue directions to the Employer concerning all benefits that are to be paid from the Employer's general assets pursuant to the provisions of the Dependent Care FSA.

4.07 Timing of Reimbursements

Reimbursements shall be made as soon as administratively feasible after the required forms have been received by the Plan Administrator or its designee.

4.08 Statements

The Plan Administrator or its designated Benefit Administrator may periodically furnish each Participant with a statement, showing such information as it deems reasonable and appropriate (e.g., the amounts paid or expenses incurred by the Employer in providing benefits under the Dependent Care FSA).

4.09 Post-Mortem Payments

Any benefit payable under the Dependent Care FSA after the death of a Participant shall be paid to his surviving Spouse, otherwise, to his estate. If there is doubt as to the right of any beneficiary to receive any amount, the Plan Administrator (or its designee) may retain such amount until the rights thereto are determined, without liability for any interest thereon.

4.10 Non-Alienation of Benefits

Except as expressly provided by the Plan Administrator, no Dependent Care FSA benefit shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so shall be void. No benefit under the Dependent Care FSA shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person.

4.11 Mental or Physical Incompetence

Every person receiving or claiming benefits under the Dependent Care FSA shall be presumed to be mentally and physically competent and of age until the Plan Administrator (or its designee) receives a written notice, in a form and manner acceptable to it, that such person is mentally or physically incompetent or a minor, and that a guardian, conservator or other person legally vested with the care of his estate has been appointed.

4.12 Inability to Locate Payee

If the Plan Administrator (or its designee) is unable to make payment to any Participant or other person to whom a payment is due under the Dependent Care FSA because he cannot ascertain the identity or whereabouts of such Participants or other person after reasonable efforts have been made to identify or locate such person, such payment and all subsequent payments otherwise due to such Participant or other person shall be forfeited after a reasonable time after the date any such payment first became due.

4.13 Tax Effects of Reimbursements

Neither the Employer, nor the Plan Administrator nor the Benefit Administrator makes any warranty or other representation as to whether any reimbursements made under the Dependent Care FSA will be treated as excludable from gross income for local, state, or federal income tax purposes. If for any reason it is determined that any amount paid for the benefit of a Participant or Beneficiary are includable in an Employee's gross income for local, federal, or state income tax purposes, then under no circumstances shall the recipient have any recourse against the Plan Administrator, the Benefit Administrator or the Employer with respect to any increased taxes or other losses or damages suffered by the Employees as a result thereof. The Dependent Care FSA is designed and is intended to be operated as a dependent care assistance plan under Section 129 of the Code.

4.14 Forfeiture of Unclaimed Reimbursement Account Benefits

Except to the extent contrary to state law, any Dependent Care FSA Reimbursement Account benefit payments that are unclaimed (e.g., benefit checks that have not been cashed) by the close of the Plan Year following the Plan Year in which the Eligible Employment Related Expense was incurred shall be forfeited.

ARTICLE V - FUNDING AGENT

The Dependent Care FSA shall be funded with amounts withheld from Compensation pursuant to Salary Reduction Agreements, and/or Nonelective Contributions provided by the

Employer, if any. The Employer will apply all such amounts, without regard to their source, to pay for the welfare benefits provided herein as soon as administratively feasible and shall comply with all applicable regulations.

ARTICLE VI - CLAIMS PROCEDURES

The Plan has established procedures for reviewing claims denied under this Dependent Care FSA and those claims review procedures are set forth in the SPD or enrollment materials.