SCHOOL BOARD OF PALM BEACH COUNTY
HEALTH CARE FLEXIBLE SPENDING ARRANGEMENT
APPENDIX B
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 Effective Date set forth herein, School Board of Palm Beach County established this Health Care Flexible Spending Arrangement (the Health Care FSA) to help provide full and complete medical care 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 contribute to a Health Care Reimbursement Account established pursuant to this Health Care FSA Plan. This Health Care FSA is intended to provide reimbursement of certain Eligible Medical Expenses incurred by the Participant and his/her eligible Dependents. The Employer intends that the Health Care FSA qualify as a Code Section 105 self-insured medical reimbursement plan, and that the benefits provided under the Health Care FSA be eligible for exclusion from the Participant's income for federal income tax purposes under Section 105(b) of the Code. This Health Care FSA is a component of, and incorporated by reference into, the Cafeteria Plan and Articles VI, VII, VIII and IX of the Cafeteria Plan document apply also to this Health Care FSA. If there is any conflict between this document and the Cafeteria Plan document with regard to Health Care FSA benefits, this document shall control.

School Board of Palm Beach County
Health Care Flexible Spending Arrangement

ARTICLE I - DEFINITIONS

Unless otherwise specified, terms that are capitalized in this Appendix 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 Health Care FSA.

1.01 Dependent
"Dependent" means any individual who is a tax dependent of the Participant as defined in Code Section 105(b), and as provided in the Patient Protection and Affordable Care Act of 2010.

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

1.03 Eligible Medical Expenses
"Eligible Medical Expenses" means those expenses that are eligible for reimbursement under this Health Care FSA as set forth in the SPD.

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

1.05 Highly Compensated Individual
"Highly Compensated Individual" means an individual defined under Code Section 105(h), as amended, as a "highly compensated individual" or a "highly compensated employee."

1.06 Reimbursement Account
"Reimbursement Account" 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 Health Care Reimbursement (as defined in Section 1.04 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).

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 Health Care FSA as of the Health Care FSA Eligibility Date set forth in the SPD or 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 Health 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 Health Care FSA on the same terms and conditions as if the Participant were still an active Employee. 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.

2.04 Non-FMLA Leave

If a Participant goes on an unpaid leave of absence that does not affect eligibility under this Health Care FSA, then the Participant will continue to participate and the contributions due for the Participant will be paid by one or more of the payment options described in the SPD and implemented by the Employer on a uniform and consistent basis in accordance with the Employer's internal policy and procedure. If a Participant goes on an unpaid leave that affects eligibility under this Health Care FSA, the election change rules in Section 3.03 of this Health Care FSA will apply. If such policy requires coverage to continue during the leave but permits a Participant to discontinue contributions while on leave, the Participant will, upon returning from leave, be required to repay the contributions not paid by the Participant during the leave.

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 Health 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 Health 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 Health Care FSA's Waiting Period.** An Employee who becomes eligible to become a Participant in this Health 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 Health 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 Health Care FSA or who is eligible to become a Participant in this Health Care FSA shall be notified, prior to each Anniversary Date of this Health Care FSA, of his right to become a Participant in this Health Care FSA, to continue participation in this Health Care FSA, or to modify or to cease participation in this Health 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 or the Heroes Earnings Assistance and Relief Tax Act. Except as provided in the SPD for HIPAA special enrollment rights arising from the birth, adoption, or placement for adoption of a child, 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 Health 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 Health 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 Health Care Reimbursement

Each Participant's Health Care FSA will be credited for Health 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 Account will be debited for Health Care Reimbursements disbursed to the Participant in accordance with Article V of this document. The entire amount elected by the Participant on the Salary Reduction Agreement as an annual amount for the Plan Year for Health Care Reimbursement less any Health Care Reimbursements already disbursed to the Participant for Expenses incurred during the Plan Year shall be available to the Participant at any time during the Plan Year without regard to the balance in the Health Care Account (provided that the periodic contributions have been made). Thus, the maximum amount of Health Care Reimbursement at any particular time during the Plan Year will not relate to the amount that a Participant has had credited to his Health Care FSA. In no event will the amount of Health Care Reimbursements in any Plan Year

exceed the annual amount specified for the Plan Year in the Salary Reduction Agreement for Health Care Reimbursement. Any amount credited to the Health 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 Health Care Reimbursement for expenses incurred during the Plan Year. Notwithstanding the foregoing, the Employer has the discretion to adopt the Heroes Earnings Assistance and Relief Tax Act and to permit a qualified reservist to take a taxable distribution of all or a portion of the participant's Health Care Account. The Employer will make Qualified Reservist Distributions to the extent that the Participant satisfies all election requirements established in accordance with applicable law and the Employer's internal policies and procedures. The amount of the Qualified Reservist Distribution shall be equal to the amount of the Participant's Pre-tax contributions allocated to the MFSA during the Plan Year that have not been applied to provide Health Care Reimbursements determined as of the date the Plan Administrator receives an election for a Qualified Reservist Distribution ("Determination Date") made in accordance with the Employer's policies and procedures. Qualified Reservist Distributions will be made without regard to claims incurred and submitted but not yet reimbursed as of the Determination Date. Participants who elect to receive a Qualified Reservist Distribution forfeit any right to reimbursement that would otherwise be available under the Plan. Notwithstanding the foregoing, 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 Medical 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. If adopted, all amounts allocated to the Health Care FSA during a Plan Year that are not used to reimburse Eligible Medical 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 permitted within the applicable Department of Labor ("DOL") or Internal Revenue Service ("IRS") regulations. The maximum annual reimbursement under the Health Care FSA 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 Health Care Reimbursement

Payment shall be made to the Participant in cash as reimbursement for Eligible Medical Expenses incurred by the Participant or his Dependents while he is 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. However, if the employer so chooses the participant may choose to make payment for eligible medical expense with an electronic payment card arrangement. The terms of the electronic payment card arrangement, if applicable, will be set forth in the SPD.

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 Health Care FSA that exceed the amount of Eligible Medical 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 Medical 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 Health Care FSA may submit claims for reimbursement for Eligible Medical Expenses incurred during the Plan Year and before the date of participation in the Health Care FSA ceases so long as the claim is submitted prior to the end of the run out period set forth in the SPD. Unless a COBRA election is made as set forth in the SPD, Participants shall not be entitled to receive reimbursement for Eligible Medical Expenses incurred after employment and/or eligibility ceases under this Section. 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 Coordination of Benefits Under the Health Care FSA
The Health Care FSA is intended to pay benefits solely for otherwise unreimbursed medical expenses. Accordingly, it shall not be considered a group health plan for coordination of benefits purposes, and its benefits shall not be taken into account when determining benefits payable under any other plan.

In the event the Employer offers a health reimbursement arrangement (HRA), as defined under applicable tax authority, the FSA shall pay prior to the HRA. If the employer offers a health savings account (HSA), the FSA shall pay only those benefits not also eligible for payment under the HSA to any employee who participates in both the HSA and the Health Care FSA (in this instance the HFSA shall be a limited purpose HFSA).

4.07 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 Health Care FSA.

4.08 Timing of Reimbursements
Reimbursements shall be made as soon as administratively feasible after the Plan Administrator or its designee has received the required forms.

4.09 Statements.
The Plan Administrator or the 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 Health Care Reimbursement under the Health Care FSA).

4.10 Post-Mortem Payments.
Any benefit payable under the Health Care FSA after the death of a Participant shall be paid to his surviving Spouse, or if no spouse, 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.

4.11 Non-Alienation of Benefits

Except as expressly provided by the Plan Administrator, no Health 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 Health Care FSA shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of any person.

4.12 Mental or Physical Incompetency

Every person receiving or claiming benefits under the Health 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.

4.13 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 Health 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.

4.14 Tax Effects of Reimbursements.

Neither the Employer, nor the Plan Administrator nor Benefit Administrator makes any warranty or other representation as to whether any reimbursements made under the Health 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 Health Care FSA is designed and is intended to be operated as a self-insured medical reimbursement plan under Section 105 of the Code.

4.15 Forfeiture of Unclaimed Reimbursement Account Benefits

Except to the extent contrary to state law (that is not preempted by ERISA), any Health Care FSA Reimbursement Account benefit payments that are unclaimed (e.g., uncashed benefit checks) by the close of the Plan Year following the Plan Year in which the Eligible Medical Expense was incurred shall be forfeited.

ARTICLE V - FUNDING AGENT

The Health 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 to the

extent applicable, shall comply with all applicable regulations promulgated by the Department of Labor ("D.O.L.") taking into consideration any enforcement procedures adopted by the D.O.L.

ARTICLE VI - CLAIMS PROCEDURES

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

ARTICLE VII - CONTINUATION COVERAGE UNDER COBRA

The SPD includes COBRA continuation of coverage provisions that shall be applicable to the Health Care FSA, to the extent the Employer is subject to COBRA (as it amended ERISA, the Code, and the Public Health Service Act, as applicable).

ARTICLE VIII - HIPAA PRIVACY AND SECURITY

8.01 Scope and Purpose

The Health Care FSA (the "Plan") will use protected health information ("PHI") to the extent of and in accordance with the uses and disclosures permitted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Specifically, the Plan will use and disclose PHI for purposes related to health care treatment, payment for health care and health care operations as set forth below.

8.02 Effective Date

This Article VIII is effective on April 14, 2003 or such later effective date of the Privacy Rules with respect to the client).

8.03 Use and Disclosure of PHI

(a) **General.** The Plan will use PHI to the extent of and in accordance with the uses and disclosures permitted by HIPAA, including but not limited to health care treatment, payment for health care, health care operations and as required by law. The Privacy Notice will list the specific uses and disclosure of PHI that will be made by the Plan.

(b) **Disclosure to the Employer.** The Plan will disclose PHI to the Employer, or where applicable, an Affiliate only upon receipt of written certification from the Employer that:

(i) The Plan document has been amended to incorporate the provisions in this Article VIII; and

(ii) The Employer agrees to implement the provisions in Section 8.04 herein.

8.04 Conditions Imposed on Employer

Notwithstanding any provision of the Plan to the contrary, the Employer agrees:

(a) Not to use or disclose PHI other than as permitted or required by this Article VIII or as required by law;

(b) To ensure that any agents, including a subcontractor, to whom the Employer provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Employer with respect to PHI received or created on behalf of the Plan;

(c) Not use or disclose an individual's PHI for employment-related purposes (including hiring, firing, promotion, assignment or scheduling) unless authorized by the Individual;

(d) Not to use or disclose an Individual's PHI in connection with any other non-health benefit program or employee benefit plan of the Employer unless authorized by the Individual;

(e) To report to the Plan any use or disclosure of PHI that is inconsistent with this Article VIII, if it becomes aware of an inconsistent use or disclosure;

(f) To provide Individuals with access to PHI in accordance with 45 C.F.R. § 164.524;

(g) To make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526;

(h) To make available the information required to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528;

(i) To make internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining the Plan's compliance with HIPAA;

(j) If feasible, to return or destroy all PHI received from the Plan that the Employer maintains in any form, and retain no copies of such PHI when no longer needed for the purpose for which disclosure was made. If return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction infeasible; and

(k) To ensure adequate separation between the Plan and Employer as required by 45 C.F.R. § 164.504(f)(2)(iii) and described in this Article VIII.

(l) To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI (other than enrollment/disenrollment information) and it will ensure that any agents or subcontractors to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect the information.

8.05 Designated Employees Who May Receive PHI

In accordance with the Privacy Rules, only certain Employees who perform Plan administrative functions may be given access to PHI. Those Employees who have access to PHI from the Plan are listed in the Privacy Notice, either by name or individual position.

8.06 Restrictions on Employees with Access to PHI

The Employees who have access to PHI listed in the Privacy Notice may only use and disclose PHI for Plan Administration functions that the Employer performs for the Plan, as set forth in the Privacy Notice, including but not limited to, quality assurance, claims processing, auditing, and monitoring.

8.07 Policies and Procedures

The Employer will implement Policies and Procedures setting forth operating rules to implement the provisions hereof.

8.08 Organized Health Care Arrangement

The Plan Administrator intends the Plan to form part of an Organized Health Care Arrangement along with any other Benefit under a covered health plan (under 45 C.F.R. § 160.103) provided by the Employer.

8.09 Privacy and Security Official

The Plan shall designate a Privacy and a Security Official, who will be responsible for the Plan's compliance with HIPAA's Privacy and Security Rules. The Privacy Official and the Security Official may be the same individual. The Privacy and Security Officials are responsible for ensuring the Plan's compliance with HIPAA's Privacy and Security Rules. The Privacy and Security Official may contract with or otherwise utilize the services of attorneys, accountants, brokers, consultants, or other third party experts as the Privacy and Security Official deems necessary or advisable.

8.10 Noncompliance

The Employer shall provide a mechanism for resolving issues of noncompliance, including disciplinary sanctions for personnel who do not comply with the provisions of this Article VIII.

8.11 Definitions

As used in this Article VIII, each of the following capitalized terms shall have the respective meaning given below:

(a) **"Individual"** means the person who is the subject of the heath information created, received or maintained by the Plan or Employer.

(b) **"Organized Health Care Arrangement"** means the relationship of separate legal entities as defined in 45 C.F.R. §160.103.

(c) **"Privacy Notice"** means the notice of the Plan's privacy practices distributed to Plan participants in accordance with 45 C.F.R. § 164.520, as amended from time to time.

(d) **"Privacy Rules"** means the privacy provisions of HIPAA and the regulations in 45 C.F.R. Parts 160 and 164.

(e) **"Protected Health Information or PHI"** means individually identifiable health information as defined in 45 C.F.R. § 160.103.

8.12 Interpretation and Limited Applicability

This Article VIII serves the sole purpose of complying with the requirements of HIPAA and shall be interpreted and construed in a manner to effectuate this purpose. Neither this Article VIII nor the duties, powers, responsibilities, and obligations listed herein shall be taken into account in determining the amount or nature of the benefits provided to any person covered under this plan, nor shall they inure to the benefit of any third parties. To the extent that any of the provisions of this Article VIII are no longer required by HIPAA, they shall be deemed deleted and shall have no further force or effect.

8.13 Services Performed for the Employer

Notwithstanding any other provision of this Plan to the contrary, all services performed by a business associate for the Plan in accordance with the applicable service agreement shall be deemed to be performed on behalf of the Plan and subject to the administrative simplification provisions of HIPAA contained in 45 C.F.R. parts 160 through 164, except services that relate to eligibility and enrollment in the Plan. If a business associate of the Plan performs any services that relate to eligibility and enrollment to the Plan, these services shall be deemed to be performed on behalf of the Employer in its capacity as Plan Sponsor and not on behalf of the Plan.