

Business Associate Agreement

This Business Associate Agreement ("Agreement") dated December 26, 2006 (the "Effective Date"), is entered into by and between The School Board of Palm Beach County ("Facility") and Carlton Palms Educational Center, Inc. (Business Associate").

WHEREAS, Facility and Business Associate have or are entering into agreements or other documented arrangements (collectively, "Business Arrangements") pursuant to which Business Associate may provide services for Facility that require Business Associate to access health information that is protected by state and/or federal law;

WHEREAS, Business Associate and Company desire that Business Associate obtain access to such information in accordance with the terms specified herein:

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the parties agree as follows:

1. **Business Associate Obligations**, Business Associate may receive from Facility health information that is protected under applicable state and/or federal law, including without limitation, protected health information ("PHI") as defined in the regulations at 45 C.F.R. Parts 160 and 164 (the "Privacy Standards") promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards. Business Associate agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards if the PHI were used or disclosed by Facility in the same manner. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

2. **Use of PHI**, Business Associate may use PHI solely for Facility's benefit and only (i) for the purpose of performing services for Facility as such services are defined in Business Arrangements, and (ii) as necessary for the proper management and administration of the Business Associate or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Facility shall retain all rights in the PHI not granted herein. Use and disclosure of de-identified health information is not permitted unless expressly authorized in this Agreement or in writing by Facility.

3. **Disclosure of PHI**, Business Associate may disclose PHI as necessary to perform its obligations under the Business Arrangement and as permitted by law, provided that Business Associate shall in such case: (a) obtain reasonable assurances from any person to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; (b) agree to immediately notify Facility of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards; and (c) ensure that all disclosures of PHI are subject to the principle of "minimum necessary use and disclosure. "i.e. only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. If Business Associate discloses PHI received from Facility, or created or received by Business Associate on behalf of Facility, to agents, including a subcontractor (collectively, "Recipients"), Business Associate shall require Recipients to agree in writing to the same restrictions and conditions that apply to the business Associate under this Agreement. To the extent permitted by law, Business Associate shall be fully liable to Facility for any acts, failures or omissions of Recipients in furnishing the services as if they were the Business Associate's own acts, failures or omissions. Business Associate shall report to Facility any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of the Business Associate becoming aware of such use or disclosure. Business Associate agrees to mitigate, to the extent practical and unless

otherwise requested by Facility in writing, any harmful effect that is known to Business Associate and is the result of a use or disclosure of PHI in violation of the Agreement.

4. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Facility, Business Associate shall (a) permit an individual to inspect or copy PHI contained in that set about the individual under conditions and limitations required under 45 CFR § 164.524, as it may be amended from time to time, and (b) amend PHI maintained by Business Associate as requested by Facility. Business shall respond to any requests from Facility for access by an individual within five (5) days of such request and shall make any amendment requested by Facility within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Business Associate shall accommodate an individual's right to have access to PHI about the individual in a Designated Record Set in accordance with the Privacy Standards set forth at 45 CFR § 164.526, as it may be amended from time to time, unless the regulation provides for a denial or an exception expressly applies. Facility shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Facility within five (5) days of receipt of any request for access or amendment by an individual. Business Associate shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set. This section 4 of the Agreement shall become effective on April 14, 2003 or on such later date that compliance with the federal Privacy Standards is required by the regulations, subject to any earlier state laws requirements.

5. **Accounting of Disclosures.** Business Associate shall make available to Facility in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFE § 164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. Business Associate shall provide such information necessary to provide an accounting within thirty (30) days of Facility's request. Such accounting must be provided without cost to the individual or to Facility if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the Facility and the Facility informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting shall be provided as long as Business Associate maintains PHI. This section 5 of the Agreement shall become effective on April 14, 2003 or on such later date that compliance with the Privacy Standards is required by the regulations, subject to any earlier state law requirements.

6. **Withdrawal of Consent of Authorization** If the use or disclosure of PHI in this Agreement is based upon an individual's specific consent or authorization for the use of his or her PHI, and (i) the individual revokes such consent or authorization in writing (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, Business Associate agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standard expressly applies.

7. **Records and Audit.** Business Associate shall make available to Facility and to the United Department of Health and Human Services or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by Business Associate on behalf of Facility for the purpose of determining Facility's compliance with the Privacy Standards or any other health oversight agency, in a time a manner designated by Facility of the Secretary. Except to the extent prohibited by law, Business, Associate agrees to notify Facility immediately upon receipt by Business Associate of any and all requests served upon Business Associate for information or documents by or on behalf of any and all government authorities.

8. **Notice of Privacy Practices.** Facility shall provide to Business Associate its Notice of Privacy Practices ("Notice") when adopted, and any amendments thereafter. Any use or disclosure permitted by this Agreement may be amended by such Notice. Business Associate agrees that it will abide by the limitations of any Notice published by Facility of which it has knowledge. The amended Notice shall not affect permitted uses and disclosures on which Business Associate has relied prior to the receipt of such Notice.

9. **Confidentiality.** Business Associate shall take any steps required to (i) protect PHI from unauthorized uses or disclosures and (ii) maintain the confidentiality and integrity of PHI. Prior to any permitted disclosure of PHI, Business Associate shall require the person or entity to which it intends to disclose PHI to assume all of the same duties with respect to PHI that Business Associate has under this Agreement. Business Associate shall be fully liable to Facility and any affected individuals for any acts, failures or omissions of Recipients as though they were its own acts, failures or omissions.

10. **Terms and Termination.**

10.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this section 10, provided, however, that any termination shall not affect the respective obligations or rights of the parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms; and provided that the effective date of Sections 4 and 5 shall be in accordance with the provisions of those sections.

10.2 Facility shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to Business Associate.

10.3 Facility, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to Business Associate hereunder if any of the following events shall have occurred and be continuing:

- (a) Business Associate shall fail to observe or perform any material covenant or agreement contained in this Agreement for ten (10) days after written notice thereof has been given to Business Associate by Facility;
- or
- (b) A violation by Business Associate of any provision of the Privacy Standards or applicable federal or state privacy law.

10.4 Under the termination of all Business Arrangements, either party may terminate this Agreement by providing written notice to the other party.

10.5 Upon termination of this Agreement for any reason, Business Associate agrees either to return to Facility or to destroy all PHI received from Facility or otherwise through the performance of services for Facility, that it is in the possession or control of Business Associate or its agents. In the case of information for which it is not feasible to "return or destroy," Business Associate shall continue to comply with the covenants in this Agreement with respect to such PHI and shall comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment. Termination of this Agreement shall be cause for Facility to terminate any Business Arrangement.

11. **Indemnification.** Business Associate will indemnify, defend and hold Facility and its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or related to any third-party claim based upon any breach of this Agreement by Business Associate or similar breach by Recipients ("Claim"). If Business Associate assumes the defense of a Claim, Facility shall have the right, at its expense; to participate in the defense of such Claim and Business Associate shall not take any final action with respect to such Claim without the prior written consent of Facility.

12. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. FACILITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

13. **Ineligible Persons.** Business Associate represents and warrants to Facility that Business Associate (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in Business Associate being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and Business Associate shall immediately notify Facility of any change in the status of the representations and warranty set forth in this section. Any breach of this section shall give Facility the right to terminate this Agreement immediately for cause.

14. **Miscellaneous.**

14.1 **Notice.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (a) personal delivery; (b) certified or registered United States mail, return receipt requested; (c) overnight delivery service with proof of delivery; or (d) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

Carlton Palms Educational Center, Inc.
28334 Churchill Smith Lane
Mt. Dora, FL 32757

Attention: Brenda Horton
Tel. No.: 352-383-8105
Fax No.: 352-7.5-1023

Copy to _____ COUNSEL:

Attention: _____
Tel. No.: _____
Fax No.: _____

The School Board of Palm Beach County
3310 Forest Hill Boulevard, C-225
West Palm Beach, Florida 33406-5813

Attention: Pam Tepsic
Tel. No.: 561-434-48272
Fax No.: 561-434-8384

Copy to: School Board Counsel

Kalinthia R. Dillard
3300 Forest Hill Blvd. #C302
West Palm Beach, FL 33406
Attention: K. Dillard
Tel. No.: 561-649-6118
Fax No.: _____

14.2 **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

14.3 **Assignment.** Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Facility shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Facility, without the prior approval of Business Associate.

14.4 **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

14.5 **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Facility relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of the Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Privacy Standards, or the parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party. No obligation on either party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the parties, their affiliates and respective successors and assigns. No third party has any rights as a result of this Agreement.

14.6 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State in which Facility is located, excluding its conflicts of laws provisions. Jurisdiction and Venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Facility is located.

14.7 **Equitable Relief.** Business Associate understands and acknowledges that any disclosure or misappropriation of any PHI in violation of this Agreement will cause Facility irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Facility shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Facility shall deem appropriate. Such right of Facility is to be in addition to the remedies otherwise available to Facility at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Facility.

14.8 **Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the parties or any of their affiliates, or (ii) a relationship of employer and employee between the parties. This Agreement does not express or imply any commitment to purchase or sell goods or services.

14.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Carlton Palms Educational Center, Inc.

THE SCHOOL BOARD OF PALM BEACH COUNTY

By: _____

By: _____

Date

Date