

AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2014, by and between

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
(hereinafter referred to as "SBBC"),
a body corporate and political subdivision of the State of Florida,
whose principal place of business is
600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

CARLTON PALMS EDUCATIONAL CENTER, INC.
(hereinafter referred to as "Contracted School"),
a Florida corporation for profit
whose principal place of business is
28308 Churchill Smith Lane, Mount Dora, Florida 32757

WHEREAS, the Contracted School is approved by the SBBC as a school conducting programs of education, training, and related services for exceptional students; and

WHEREAS, SBBC agrees to support the educational services as outlined in the Individualized Education Program (hereinafter referred to as "IEP") of any SBBC district student in residential placement at Contracted School; and

WHEREAS, this Agreement applies to any SBBC student residing at Contracted School who have been appropriately classified as an exceptional student by SBBC in compliance with Florida Statutes and all pertinent state and SBBC rules, regulations and criteria; and

WHEREAS, an IEP indicating specific educational needs and such plan and needs as are determined necessary by each individual student's IEP team must be established for each SBBC district student based on assessment results; and

WHEREAS, the parents of each SBBC district student and the Agency for Persons with Disabilities (hereinafter referred to as "Agency") have agreed to place their students served by this Agreement for residential care in the Contracted School.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1 - RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement shall commence on July 1, 2014 and shall conclude on June 30, 2015.

2.02 **Compliance Documentation.** SBBC acknowledges that the Contracted School has provided SBBC with documentation demonstrating compliance with the requirements of Rule 6A-6.0361, FAC.

2.03 **Student Enrollment.** The Contracted School shall accept the enrollment of up to ten (10) SBBC district students each school year, who have been evaluated by SBBC as exceptional students, and place such students in appropriate educational programs to fit each the student's special needs.

2.04 **Notice of Acceptance.** The Contracted School will provide a completed Notice of Acceptance Form (attached hereto as Exhibit "A" to this Agreement and incorporated herein by reference) to SBBC's Executive Director of Exceptional Student Education and Support Services prior to the first day each SBBC district student is placed at Contracted School.

2.05 **Educational Expenses.** SBBC shall pay the Contracted School the educational expenses for each individual SBBC district student placed at the Contracted School during the term of this Agreement as set forth in Section 2.01. The educational expenses payable by SBBC shall be according to the current state matrix level as funded by the State of Florida for each individual SBBC district student. The Contracted School shall invoice SBBC for each individual SBBC district student at the end of each month during which the student was provided an educational program. SBBC shall not pay for costs of any SBBC district student's residence at the Contracted School. This is a non-cost based, fixed fee for term contract.

2.06 **Eligible Services.** The SBBC district students enrolled at the Contracted School will receive special education services according to the IEPs developed by SBBC prior to their residence at the Contracted School. SBBC shall only be invoiced by Contracted School for the instruction portion of services provided to SBBC district students according to the current state matrix level. The program provided by the Contracted School will comply with all provisions of the current SBBC approved *Special Programs and Procedures for Exceptional Students*.

2.07 **Certifications and Licensure.** All instructional personnel provided by the Contracted School to serve any SBBC district student shall be certified in accordance with Sections 6-A-1.0503 and 6A-4.002, F.A.C., and shall hold a professional or temporary Florida certificate of Exceptional Education. Occupational therapy will be provided by a licensed

occupational therapist. The Contracted School shall provide SBBC with copies of teacher certification and therapist licensure. If changes in instructional personnel and/or occupational therapists are made by Contracted School, SBBC will be notified and provided with copies of certification and licensure for such personnel and/or therapists within ten (10) days.

2.08 Educational Program. The Contracted School shall provide an educational program for each SBBC district student consisting of six (6) hours per day of instruction, five (5) days per week, excluding school holidays. The Contracted School shall provide SBBC with a monthly attendance record of each SBBC district student. This attendance record for each SBBC district student shall accompany the monthly invoice of that student's educational expenses as referenced in Section 2.02. In addition, a monthly report of each SBBC district student's progress toward the IEP annual goals and short-term objectives shall be submitted to SBBC. The Contracted School shall also provide SBBC with an evaluation of each SBBC district student's progress, including grades, course credits, and progress toward Standard Diploma Sunshine State Standards at the end of each school semester.

2.09 Revision of Student's IEP. Meetings to review or revise each SBBC district student's IEP may be initiated by either the Contracted School or SBBC. The parties agree that SBBC is the local education agency ("LEA"). SBBC and the Contracted School shall ensure that each SBBC district student's parent(s) and SBBC representative(s) are involved in any decision about each student's IEP.

2.10 Payment of FEFP Funds. SBBC will receive funds from the Florida Education Finance Program for each SBBC district student for the 2014-2015 School Year according to each SBBC student's current state matrix level. SBBC agrees to pay the Contracted School in monthly installments for educational services provided to each SBBC district student during the term of this Agreement. Should any SBBC district student be absent for more than ten (10) consecutive school days, the Contracted School will contact SBBC to negotiate an adjusted payment. Each SBBC district student's placement at the Contracted School is co-funded by SBBC and the Agency. SBBC provides funding for a thirty (30) hour per week educational program and the Agency provides funding for the residential placement. The educational costs payable by SBBC are for six (6) hours per day of instruction during a two hundred forty-eight (248) day school year.

2.11 Co-Funding Agencies. In the event of funding to Contracted School under separate contracts with co-funding agencies, the discharge of any SBBC district student because of default by any co-funding agency shall not be a default of this Agreement. Prior to discharge of a SBBC district student because of the co-funding agency's default, the Contracted School will give notice to SBBC. In addition, SBBC shall be reimbursed for all unearned tuition received by the Contracted School.

2.12 Insurance. The Contracted School shall provide SBBC with proof of general liability insurance in the amount of \$1,000,000 and shall name SBBC as an additional insured. A copy of this policy will be filed with SBBC's Risk Manager within twenty (20) days of execution of this Agreement.

2.13 **Inspection of Contracted School's Records by SBBC.** Contracted School shall maintain records and documents sufficient to reflect each SBBC district student's daily attendance in the Contracting School's educational program. All Contracted School's Records of each SBBC district student's attendance, regardless of the form in which they are kept, shall be open to inspection and subject to inspection and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative.

(a) **Contracted School's Records Defined.** For the purposes of this Agreement, the term "Contracted School's Records" shall include each SBBC district student's daily attendance in the educational program and monthly progress reports, in addition to the documents required in Section 2.02 of this Agreement.

(b) **Duration of Right to Inspect.** For the purpose of such inspections or reproductions, SBBC's agent or authorized representative shall have access to Contracted School's Records from the effective date of this Agreement, for the duration of the term of this Agreement, and until the later of five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to Contracted School pursuant to this Agreement.

(c) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide Contracted School reasonable advance notice [a minimum of two (2) weeks] of any intended inspection and/or reproduction.

(d) **Inspection Site Conditions.** Contracted School shall be provided adequate and appropriate work space to SBBC's agent or its authorized representative in order to exercise the rights permitted under this section.

(e) **Failure to Permit Inspection.** Failure by Contracted School to permit inspection, and/or reproduction as permitted under this Section shall constitute grounds for termination of this Agreement by SBBC for cause.

(f) **Inspector General Audits.** Contracted School shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials, as it relates to the implementation of this agreement.

2.14 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC:	<i>Superintendent of Schools</i>
	<i>The School Board of Broward County, Florida</i>
	<i>600 Southeast Third Avenue</i>
	<i>Fort Lauderdale, Florida 33301</i>

With a Copy to: *Director, Exceptional Student Education and Support Services
The School Board of Broward County, Florida
1701 N.W. 23rd Avenue
Fort Lauderdale, FL 33311*

To Contracted School: *Brenda Horton
Carlton Palms Education Center
Fox Run Plaza
2520 Wrangle Hill Road, Suite 200
Bear, Delaware 19701*

With a Copy to: *Harlow Middleton, Esq.
Carlton Palms Education Center
28334 Churchill Smith Lane
Mount Dora, FL 32757*

2.15 Background Screening: Pursuant to Section 1012.465 Florida Statutes, the Contracted School is an entity under contract with this School Board and is not, nor is its employees or subcontractors considered employees of the School Board. Therefore, Contracted School, its employees and its subcontractors who have direct contact with students in and on the Contracted School's facilities or who have access to or control of school funds must undergo Level 2 screening. Level 2 screening consists of fingerprinting and a background check. In the event that the Level 2 screening is conducted by the Contracted School, the Contracted School agrees to provide SBBC with the following information for each of its employees or subcontractors who meet the criteria set forth in Section 1012.465, Florida Statutes: 1) evidence that the employee or subcontractor meets the screening standards in Section 435.04, Florida Statutes; 2) evidence that Contracted School's license or certificate is active and in good standing; 3) evidence that Contracted School completed the criminal history check within the last 5 years (such evidence must include a copy of the fingerprinting card, the FDLE report, and the FBI background check information); and 4) a copy of the employee's or subcontractor's Affidavit of Good Moral Character. Section 1012.468 (4) and (5), Florida Statutes, limits SBBC's ability to require additional criminal history checks and does not create any private cause of action for violation of that statute nor does it create on the part of SBBC or the Contracted School any new duty of care or basis of liability.

2.16 Indemnification. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

A. By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

B. By Contracted School: Contracted School agrees to indemnify, hold harmless and defend SBBC, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which SBBC, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by Contracted School, its agents, servants or employees; the equipment of Contracted School, its agents, servants or employees while such equipment is on premises owned or controlled by SBBC; or the negligence of Contracted School or the negligence of Contracted School's agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including SBBC's property, and injury or death of any person whether employed by Contracted School, SBBC or otherwise.

ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

3.03 **Independent Contractor.** The parties to this agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party nor its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC or Contracted School during the term hereof upon thirty (30) days written notice to the other party of its desire to terminate this Agreement. In the event of such termination, SBBC shall pay the Contracted School for all services rendered through the effective date of termination.

3.06 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period; this Agreement may be terminated by the non-defaulting party upon thirty (30) days notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.07 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

3.08 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC with interest calculated from the date of the erroneous payment or overpayment. Interest shall be calculated using the interest rate for judgments under Section 55.03, Florida Statutes, applicable at the time the erroneous payment or overpayment was made by SBBC.

3.09 **Public Records.** Pursuant to Section 119.0701, Florida Statutes, any party contracting with SBBC is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that SBBC would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to SBBC all public records in that party's possession upon termination of its contract with SBBC and destroy any duplicate public records that are exempt or confidential and exempt from public records

disclosure requirements. All of such party's records stored electronically must be provided to SBBC in a format that is compatible with SBBC's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

3.10 Student Records: Notwithstanding any provision to the contrary within this Agreement, any party contracting with SBBC under this Agreement shall fully comply with the requirements of Section 1002.22, Florida Statutes, or any other state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees, for itself, its officers, employees, agents, representatives, contractors or subcontractors, to fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or sub-contractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Section 1002.22, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.11 Compliance with Laws. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.12 Place of Performance. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.13 Governing Law and Venue. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.14 Entirety of Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.15 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.16 **Assignment.** Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.17 **Incorporation by Reference.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

3.18 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.20 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.21 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.22 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.23 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire,

hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.24 **Survival.** All representations and warranties made herein regarding indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.25 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

FOR SBBC

(Corporate Seal)

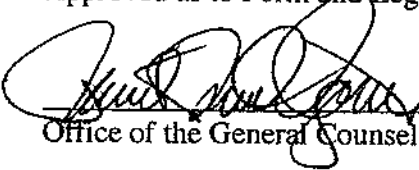
THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

ATTEST:

By _____
Patricia Good, Chair

Robert W. Runcie, Superintendent of
Schools

Approved as to Form and Legal Content:

 04/09/14

Office of the General Counsel

FOR CONTRACTED SCHOOL

(Corporate Seal)

CARLTON PALMS EDUCATION
CENTER, INC.

ATTEST:

By Kathleen Shea

_____, Secretary

-or-

Susan O. King

Witness

Lisa Rose Ayers

Witness

**The Following Notarization is Required for Every Agreement Without Regard to
Whether the Contracted School Chose to Use a Secretary's Attestation or Two (2)
Witnesses.**

STATE OF Delaware
COUNTY OF New Castle

The foregoing instrument was acknowledged before me this 2 day of
April, 2014 by Kathleen Shea of
Name of Person
Carlton Palms Educational Center, Inc. on behalf of the corporation. He/She is personally
known to me or produced _____ as identification and did/did
not first take an oath.
Type of Identification

My Commission Expires:



(SEAL)

Lisa Rose Ayers
Signature - Notary Public

Lisa Rose Ayers
Printed Name of Notary

20130827000014
Notary's Commission No.

S:/v/allwork-use/contracts/review/1314year/140318carlton

ADVOSERV**STUDENT ANNOUNCEMENT**

STUDENT NAME:

DATE:

DOB:

CAMPUS:

S.S. #:

ADMISSION CONFIRMATION --- ACTUAL DOA:

PARENT/GUARDIAN #1:	PARENT/GUARDIAN #2:
HOME #:	HOME #:
WORK #:	WORK #:
FUNDING SOURCE #1:	FUNDING SOURCE #2:
WORK #:	WORK #:
FAX #:	FAX #:
PROGRAM CONTACT #1:	PROGRAM CONTACT #2:
WORK #:	WORK #:
FAX #:	FAX #:
MEDICAL BILLING CONTACT: Primary	MEDICAL BILLING CONTACT: Secondary
PHONE #:	PHONE #:

ANNOUNCEMENT MADE BY: Gail Courtney

DATE OF ANNOUNCEMENT: _____

EXHIBIT "A"