

## MEMORANDUM

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February 26, 2014

**TO:** Honorable Mayor and City Commissioners

**FROM:** Kenneth Fields, City Manager

**SUBJECT:** Resolution 2014-04, Industrial Development Revenue Bonds Issuance

**SYNOPSIS:** The approval will authorize the issuance of bonds in one or more series in the principal amount of not to exceed \$4,141,000.

### RECOMMENDATION

The Lake Wales Charter Schools, Inc. request that the City Commission adopt Resolution 2014-04, which:

1. Authorizes the City to issue Industrial Development Revenue Bonds (Edward W. Bok Academy Project) Series 2014 in an aggregate principle amount not to exceed \$4,141,000 for the purpose of providing funds to make a loan to Lake Wales Charter Schools, Inc. (the Borrower) to refinance the acquisition and construction of improvements to Edward W. Bok Academy;
2. Approves the form of a Financing Agreement (and the forms of the Bond Form, the Promissory Note and the Lender's Certificate attached thereto), an Assignment, and an Indemnification and Hold Harmless Agreement in connection therewith; and
3. Authorizes the Mayor to execute the Financing Agreement, the Bonds, the Assignment, and Tax Agreement with respect to the Bonds and other related closing documents.

### BACKGROUND

Lake Wales Charter Schools, Inc., a not for profit corporation (the "Borrower"), has applied to the City of Lake Wales to issue the Series 2014 Bonds for the purpose of refinancing the Project described below. On February 3, 2014, a Notice of Public Hearing was published in The Lakeland Ledger noticing a hearing, which was held by the City Commission on February 18, 2014 at 6:00 p.m. regarding the issuance of the Series 2014 Bonds. After said hearing, the City adopted Resolution No. 2014-03 providing preliminary approval of the issuance of the Series 2014 Bonds.

The Series 2014 Bonds and the interest thereon shall not constitute an indebtedness or pledge of the general credit or taxing power of the City, Polk County, the State of Florida or any political subdivision or agency. The Series 2014 Bonds shall be payable solely from the revenues and

collateral pledged in the Financing Agreement entered into by and between the City and the Borrower prior to or contemporaneously with the issuance of the Series 2014 Bonds.

The County Commission of Polk County, Florida must approve the issuance of the Series 2014 Bonds and such approval is expected on March 4, 2014.

## **PROJECT**

The principal purpose of the Series 2014 Bonds is the refinancing of all or a portion of the costs of acquiring and constructing improvements to the Edward W. Bok Academy middle school facility located at 13901 Highway 27, Lake Wales, Florida. No portion of the financing will be used for new construction.

Adoption of the resolution shall not be construed as an approval of any necessary rezoning applications or for any other regulatory permits relating to the Project.

The City's adoption of the resolution shall not be construed to:

- a) Attest to the Borrower's ability to repay the indebtedness represented by the Series 2014 Bonds.
- b) A recommendation to prospective purchasers of the Series 2014 Bonds to purchase the same.
- c) Have waived any right of the City or stopping the City from asserting any rights or responsibilities it may have in that regard.

## **OTHER OPTIONS**

Not adopt the resolution. The Borrower will have to pursue other refinancing alternatives.

## **FISCAL IMPACT**

The Borrower will pay the bond issuance costs including the City's Attorney and Special Counsel fees and expenses. As previously stated the bond issue does not constitute an indebtedness or pledge of the general credit or taxing power of the City.

The issuance of the Series 2014 Bonds will not have any impact on services provided by the City (Fire, Police, Streets, Parks, Library, Water and Sewer).

## **ATTACHMENTS**

Resolution 2014-04  
Financing Agreement  
Indemnification and Hold Harmless Agreement  
Form of Bond  
Promissory Note

## RESOLUTION 2014-04

**A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA (THE "ISSUER") AUTHORIZING THE ISSUANCE OF THE ISSUER'S INDUSTRIAL DEVELOPMENT REVENUE BONDS (EDWARD W. BOK ACADEMY PROJECT), SERIES 2014 (THE "SERIES 2014 BOND") IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$4,141,000 FOR THE PURPOSE OF PROVIDING FUNDS TO MAKE A LOAN TO LAKE WALES CHARTER SCHOOLS, INC. (THE "BORROWER") TO REFINANCE THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS TO EDWARD W. BOK ACADEMY; APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION OF A FINANCING AGREEMENT, INCLUDING AN ASSIGNMENT THEREOF, AN INDEMNIFICATION AND HOLD HARMLESS AGREEMENT AND SERIES 2014 BONDS; AWARDING THE SALE OF THE SERIES 2014 BONDS BY A NEGOTIATED SALE TO CITIZENS BANK & TRUST; AUTHORIZING THE OFFICIALS OF THE ISSUER TO TAKE CERTAIN ACTION IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2014 BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF THE SERIES 2014 BONDS; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Issuer is a municipal corporation, and has powers pursuant to Chapter 166, Florida Statutes, Chapter 159, Part II, Florida Statutes, the municipal charter of the Issuer, and other applicable provisions of law (herein referred to as the "Act"), and pursuant to the Act may provide for the issuance of and sell its revenue bonds for the purpose of paying all or any part of the cost of any "project" as defined in Chapter 159, Part II, Florida Statutes; and

WHEREAS, the Issuer has been requested by Lake Wales Charter Schools, Inc., a nonprofit corporation organized and existing under the laws of the State of Florida (the "Borrower") which has been determined by the Internal Revenue Service to be an exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to assist the Borrower by making a loan for the purpose of: (i) refinancing the outstanding portion of a mortgage loan dated June 24, 2008, by and between the Borrower and Bank of the Ozarks, the proceeds of which were used for the acquisition, renovation, addition and equipping of the Edward W. Bok Academy, consisting of improvements of approximately 10 acres of land together with four existing buildings totaling approximately 40,910 square feet and containing 23 classrooms, a cafeteria, a kitchen, an auditorium, a library/media center, administrative offices, and athletic facilities located at 13901 Highway 27, Lake Wales, Florida 33859, and such

other improvements, acquisitions, additions and renovations at the school (the "Project") (which Project is outside the municipal boundaries of the Issuer); and (ii) paying a portion of the costs associated with the Series 2014 Bonds; and

WHEREAS, following public notice published on February 3, 2014 in the *News Chief*, on February 18, 2014 the Issuer held a public hearing regarding the issuance of its Industrial Development Revenue Bonds (Edward W. Bok Academy Project), Series 2014 (the "Series 2014 Bonds"), adopted Resolution No. 2014-03 (the "Inducement Resolution") and entered into a Memorandum of Agreement with the Borrower; and

WHEREAS, the Issuer has been advised by the Borrower that the Borrower has received a Commitment Letter from Citizens Bank & Trust (together with its successors and assigns, as the lender of the Series 2014 Bonds, the "Lender") dated October 10, 2013 (the "Commitment") to purchase the Series 2014 Bonds; and

WHEREAS, it is necessary and desirable to approve the form of and authorize the execution of a Financing Agreement, including the assignment thereof to the Lender as security for the Series 2014 Bonds, the Series 2014 Bonds (as hereinafter set forth and defined) and other related documents as provided herein; and

WHEREAS, on March 4, 2014, the Board of County Commissioners (the "County Board") of Polk County, Florida (the "County") approved the issuance of the Series 2014 Bonds by the Issuer;

BE IT RESOLVED by the members of the City Commission of the City of Lake Wales, Florida, that:

**SECTION 1. AUTHORITY FOR THIS RESOLUTION.** This Resolution (together with the Inducement Resolution, the "Bond Resolution"), is adopted pursuant to the Act.

**SECTION 2. DEFINITIONS.** Unless the context otherwise requires, the terms used in this Resolution in capitalized form and not otherwise defined herein shall have the meanings specified in the Financing Agreement substantially in the form attached hereto as **Exhibit A** (the "Financing Agreement"). The Bond Resolution, the Financing Agreement and the Indemnity Agreement (hereinafter defined) are collectively referred to herein as the "Bond Documents." Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

**SECTION 3. INTERPRETATION.** Whenever in this Resolution any governmental unit or body, including the Issuer, or any officer, director, board, department, commission, or agency of a governmental unit or body is defined or referred to, such definition or reference shall be deemed to include the governmental unit or body or officer, director, board, department, commission or agency succeeding to or in whom or which is vested, the functions, rights,

powers, duties and obligations of such governmental unit or body or officer, director, board, department, commission or agency, as the case may be, encompassed by this Resolution.

Unless the context shall clearly indicate otherwise in this Resolution: (i) references to sections and other subdivisions, whether by number or letter or otherwise, are to the respective or corresponding sections and subdivisions of this Resolution; (ii) the terms "herein," "hereunder," "hereby," "hereto," hereof," and any similar terms, refer to this Resolution only and to this Resolution as a whole and not to any particular section or subdivision hereof; and (iii) the term "heretofore" means before the date of adoption of this Resolution; the word "now" means at the time of enactment of this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

**SECTION 4. FINDINGS.** The Issuer hereby finds, determines and declares as follows:

A. Pursuant to the Inducement Resolution, the Issuer authorized the issuance of the Series 2014 Bonds upon various conditions named therein, in order to loan funds to the Borrower to refinance the Project.

B. The Borrower has now arranged for the refinancing of the Project through a loan to be made to the Borrower by Citizens Bank & Trust (the "Lender") through the purchase of the Series 2014 Bonds. The Borrower has requested that the Issuer issue the Series 2014 Bonds in the maximum aggregate principal amount of not to exceed \$4,141,000.

C. The Project is an "educational facility" and a "project" within the meaning of the Act, and the Issuer is authorized under the Act to issue the Series 2014 Bonds for the purpose of refinancing the Project as herein contemplated and to fully perform the obligations of the Issuer in connection therewith in order to make a significant contribution to the economic growth within the municipal boundaries of the Issuer and promote the economy of the County, increase and preserve opportunities for gainful employment and purchasing power, increase educational opportunities, improve the prosperity and welfare of the State of Florida and its inhabitants, and otherwise contribute to the prosperity, health and welfare of the County, and the inhabitants thereof.

D. The Issuer, as required by the Act, has initially determined that the interest on the Series 2014 Bonds will be excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder (the "Code"), based in part on a certificate to be obtained from the Borrower; and the Series 2014 Bonds will not be issued unless the Issuer has received a satisfactory opinion of bond counsel regarding the fact that the interest on such Series 2014 Bonds will be excluded from gross income at the time of the delivery of the Series 2014 Bond.

E. The County or the Issuer, as applicable, will be able to cope satisfactorily with the impact of the Project and has provided, or shall cause to be provided when needed, the

public facilities, including utilities and public services, that will be necessary for the continued operation, repair and maintenance of the Project and on account of any increases in population or other circumstances resulting therefrom.

F. The availability of financing by means of industrial development revenue bonds was and is an important inducement to the Borrower to proceed with the financing and refinancing of the Project.

G. Adequate provision has been made in the documents attached hereto for a loan by the Issuer to the Borrower for the refinancing of the Project and thereafter for the operation, repair and maintenance of the Project at the expense of the Borrower and for the repayment by the Borrower of the loan in installments sufficient to pay the principal of and the interest on the Series 2014 Bonds and all costs and expenses relating thereto in the amounts and at the times required.

H. The Issuer is not obligated to pay the Series 2014 Bonds except from the proceeds derived from the repayment of the loan by the Borrower, or from the other security pledged therefor, and neither the faith and credit of the Issuer, the County or the State of Florida or any political subdivision thereof, nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or the interest on the Series 2014 Bonds.

I. The Issuer, the Borrower and the Lender will, concurrently with the issuance of the Series 2014 Bonds execute the documentation required for the refinancing of the Project as contemplated hereby.

J. A negotiated sale of the Series 2014 Bonds is required and necessary and is in the best interest of the Issuer for the following reasons: (i) the Series 2014 Bonds will be special and limited obligations of the Issuer payable solely out of moneys derived by the Issuer from the Borrower's operation of the Project as a charter school or as otherwise provided herein and will be secured by funds of the Borrower and by the Mortgage, Security Agreement, Financing Statement and Assignment of Rents from the Borrower to the Issuer and the Lender (the "Mortgage"); (ii) the Borrower will be required to pay all costs of the Issuer in connection with the financing; (iii) the cost of issuance of the Series 2014 Bonds, which must be borne directly or indirectly by the Borrower would most likely be greater if the Series 2014 Bonds were sold at public sale by competitive bids than if the Series 2014 Bonds are sold at negotiated sale, and there is no basis, considering prevailing market conditions, for any expectation that the terms and conditions of a sale of the Series 2014 Bonds at public sale by competitive bids would be any more favorable than at negotiated sale; (iv) because prevailing market conditions are uncertain, it is desirable to sell the Series 2014 Bonds at a predetermined price; and (v) industrial development revenue bonds having the characteristics of the Series 2014 Bonds are typically sold at negotiated sale under prevailing market conditions.

K. The costs of refinancing the Project will be paid from the proceeds of the Series 2014 Bonds in accordance with the terms of the Financing Agreement and these costs constitute costs of a "project" within the meaning of the Act.

L. The Borrower desires to accept the Commitment of the Lender to purchase the Series 2014 Bonds.

M. Issuance of the Series 2014 Bonds was approved by the County Board by its adoption of a Resolution on March 4, 2014. The County Board is the elected legislative body of Polk County and has jurisdiction over the entire area in which the Project is located.

N. All conditions precedent to the refinancing of the Project set forth in the Inducement Resolution have been satisfied, or will be satisfied prior to the delivery of the Series 2014 Bonds, and the issuance of the Series 2014 Bonds will otherwise comply with all of the provisions of the Act.

**SECTION 5. RATIFICATION OF THE INDUCEMENT RESOLUTION.** All actions taken by the Issuer in connection with its February 18, 2014 meeting pertaining to the adoption of the Inducement Resolution are hereby ratified and confirmed in all respects.

**SECTION 6. AUTHORIZATION OF THE PROJECT.** The refinancing of the Project is hereby authorized.

**SECTION 7. AUTHORIZATION OF THE SERIES 2014 BONDS.** For the purpose of making a loan to the Borrower to refinance the Project and pay the costs of issuance of the Series 2014 Bonds, there is hereby approved and authorized to be issued under this Resolution the Issuer's "Industrial Development Revenue Bonds (Edward W. Bok Academy Project), Series 2014," in an aggregate principal amount of not to exceed \$4,141,000. The Series 2014 Bonds shall be issued as fully registered bonds, shall be dated as of the date of issuance, shall mature no later than March 6, 2034, shall bear interest at an initial fixed rate not to exceed 2.95% and shall have such other terms and conditions as provided in, and shall be in the form of, the Series 2014 Bonds attached to the Financing Agreement as Exhibit A, the form of the Series 2014 Bonds attached to the Financing Agreement as Exhibit A is hereby approved with such changes, alterations and corrections as may be approved by the Mayor, such approval to be conclusively presumed by the execution thereof by the Mayor. The Series 2014 Bonds shall be executed by the Mayor and attested and sealed by the City Clerk who shall deliver the same to the Lender, upon payment of the purchase price thereof equal to the principal amount thereof. The Series 2014 Bonds shall be issued on such date as shall be mutually agreed upon by the Lender, the Borrower and the Issuer. Notwithstanding any other provision hereof, the Series 2014 Bonds shall not be issued nor shall any instrument referred to herein be executed by the Issuer until the Series 2014 Bonds is approved as to form by its Bond Counsel, Bryant Miller Olive P.A.

**SECTION 8. BANK QUALIFIED.** The Issuer hereby designates the Series 2014 Bonds as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code. The Issuer and any subordinate entities of the Issuer and any issuer of "tax-exempt" debt that issues "on behalf of" the Issuer do not reasonably expect during the calendar year 2014 to issue more than \$10,000,000 of "tax-exempt" obligations, exclusive of any private activity bonds as defined in Section 141(a) of the Code (other than qualified 501(c)(3) bonds as defined in Section 145 of the Code).

**SECTION 9. SALE OF THE SERIES 2014 BONDS TO THE LENDER.** Because of the characteristics of the Series 2014 Bonds, prevailing market conditions, and additional savings to be realized from an expeditious sale of the Series 2014 Bond, and based on the requested recommendation of the Borrower, the Issuer finds that it is in the best interest of the Issuer to sell the Series 2014 Bonds at a private negotiated sale to the Lender subject to satisfaction of the provisions of Sections 7 and 20 hereof. Prior to the issuance of the Series 2014 Bonds, the Issuer shall receive from the Lender a Lender's Certificate, in substantially the form attached to the Financing Agreement as Exhibit C and a Disclosure Letter containing the information required by Section 218.385, Florida Statutes, in substantially the form attached hereto as **Exhibit B**.

**SECTION 10. MUTILATED, LOST, STOLEN OR DESTROYED SERIES 2014 BONDS.** In case the Series 2014 Bonds shall become mutilated or be lost, stolen or destroyed, upon the payment of any costs by the Owner thereof, the Issuer shall cause to be executed and furnished to the owner a new Series 2014 Bonds in exchange and substitution for, and upon the cancellation of, the mutilated Series 2014 Bonds or in lieu of and substitution for such lost, stolen or destroyed Series 2014 Bond.

In every case the applicant shall furnish evidence satisfactory to the Issuer of the destruction, theft or loss of such Series 2014 Bonds and indemnity satisfactory to the Issuer, and the Issuer shall charge the applicant for the issuance of such new Series 2014 Bonds an amount sufficient to reimburse it for any expense incurred by it in the issuance thereof.

**SECTION 11. PAYMENT OF PRINCIPAL AND INTEREST.** The Issuer shall cause to be paid solely from funds provided by the Borrower, when due, the principal of and the interest on the Series 2014 Bonds at the place, on the date and in the manner provided in the Financing Agreement and in the Series 2014 Bonds according to the true intent and meaning thereof; provided that the Issuer is not obligated to pay the Series 2014 Bonds or the premium, if any, and the interest thereon except from the loan payments made by the Borrower pursuant to the Financing Agreement.

**SECTION 12. COVENANT TO PERFORM.** The Issuer shall faithfully perform at all times all of its covenants, undertakings and agreements contained in this Resolution, in the Series 2014 Bonds or in any proceedings of the Issuer pertaining thereto. The Issuer represents that it is duly authorized under the Constitution and laws of the State of Florida, particularly the Act, to issue the Series 2014 Bonds and to adopt this Resolution, to execute the Financing



Agreement and pledge the revenues, receipts, proceeds and funds derived in respect thereof, in the manner and to the extent herein set forth as security for the Series 2014 Bonds; that all action on its part for the issuance of the Series 2014 Bonds and the adoption of this Resolution has been duly and effectively taken; and that the Series 2014 Bonds are valid and enforceable limited obligations of the Issuer according to their terms.

**SECTION 13. LIMITED LIABILITY OF ISSUER.** Anything in the Series 2014 Bonds or the Bond Documents to the contrary notwithstanding, the performance by the Issuer of all duties and obligations imposed upon it hereby, the exercise by it of all powers granted to it hereunder, the carrying out of all covenants, agreements and promises made by it hereunder, and the liability of the Issuer for all warranties and other covenants hereunder, shall be limited solely to the revenues and receipts derived from the Financing Agreement or the security therefor, and the Issuer shall not be required to effectuate any of its duties, obligations, powers or covenants hereunder except to the extent of such revenues and receipts.

None of the State of Florida, the County or the Issuer shall in any event be liable for the payment of the principal of or interest on the Series 2014 Bonds or any other charges with respect thereto, except that the Issuer has provided for the payment of the Series 2014 Bonds from the special and limited sources as in the Bond Documents established and provided. The Series 2014 Bonds issued hereunder shall never constitute an indebtedness of the State of Florida or of any political subdivision of the State of Florida (including the Issuer) within the meaning of any state constitutional provisions or statutory limitation and shall never constitute or give rise to the pecuniary liability of the State of Florida or any political subdivision thereof or of the Issuer or a charge against their general credit. The holder of the Series 2014 Bonds shall not have the right to compel any exercise of the ad valorem taxing power of the State of Florida, County, or of any other political subdivision of said State to pay the Series 2014 Bonds or the interest thereon or any other charges with respect thereto.

**SECTION 14. NO PERSONAL LIABILITY.** No recourse under or upon any obligation, covenant or agreement contained in, the Series 2014 Bonds, the Bond Documents or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Resolution, shall be had against any member of the Issuer, agent, employee or officer, as such, past, present or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of the Series 2014 Bonds or otherwise of any sum that may be due and unpaid by the Issuer upon the Series 2014 Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any member or officer, as such, to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to the holder of the Series 2014 Bonds or otherwise, of any sum that may remain due and unpaid upon the Series 2014 Bonds is hereby expressly waived and released as a condition of and in consideration for the execution of the Bond Documents and the issuance of the Series 2014 Bonds.

The approval given herein shall not be construed as: (i) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (ii) a recommendation to the Lender or any other prospective purchaser of the Series 2014 Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Series 2014 Bonds, or (iv) any necessary governmental approval relating to the Project, and the Issuer shall not be construed by reason of its adoption of this Resolution to have made any such endorsement, finding or recommendation or to have waived any of the Issuer's rights or estopped the Issuer from asserting any rights or responsibilities it may have in that regard.

**SECTION 15. THE BOND DOCUMENTS.** The Financing Agreement (which includes as Exhibits thereto, a form of the Series 2014 Bonds, the form of the Promissory Note and the form of Assignment) and the Indemnification and Hold Harmless Agreement from the Borrower to the Issuer, dated March 6, 2014, a form of which is attached hereto as **Exhibit C** (the "Indemnity Agreement") are hereby approved by the Issuer with such changes, alterations and corrections as may be approved by the Mayor, such approval to be conclusively presumed by the execution thereof by the Mayor (or, in the case of any documents to which the Issuer is not a party, the acceptance thereof), and the Issuer hereby authorizes and directs the Mayor to execute the Financing Agreement, the Indemnity Agreement, the Assignment and the Series 2014 Bonds, with an attestation by the City Clerk, simultaneous with the issuance of the Series 2014 Bonds, and to deliver such documents to the Borrower all of the provisions of which, when executed and delivered by the Issuer as authorized herein, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

**SECTION 16. GENERAL AUTHORITY.** The Mayor, the City Clerk and the other officers and employees of the Issuer are hereby authorized to execute and deliver such documents, the tax return and tax certificates, instruments and certificates as deemed necessary or appropriate to carry out the intent of this Resolution and do all acts and things required of them by this Resolution and the other Bond Documents or desirable or consistent with the requirements hereof or thereof, for the full punctual and complete performance of all terms, covenants and agreements contained in the Series 2014 Bonds and this Resolution.

**SECTION 17. PREREQUISITES PERFORMED.** All acts, conditions and prerequisites relating to the passage of this Resolution and required by the Constitution or laws of the State of Florida to happen, exist and be performed precedent to and in the passage hereof have happened, exist and have been performed as so required.

**SECTION 18. RESOLUTION CONSTITUTES A CONTRACT.** The Issuer covenants and agrees that this Resolution shall constitute a contract between the Issuer and the holders from time to time of the Series 2014 Bonds and that all covenants and agreements set forth herein and in the Bond Documents and to be performed by the Issuer shall be for the benefit and security of the holder of the Series 2014 Bond.

**SECTION 19. COVENANT REGARDING TAX STATUS OF SERIES 2014A BONDS.**

The Issuer covenants that it will not knowingly take any action, or knowingly fail to take any action, and will not fail to take any action reasonably requested by the Lender or the Borrower, and will not take any action which the Lender or the Borrower reasonably requests it not to take, if any such action or failure to take action would adversely affect the exclusion from gross income of interest on the Series 2014A Bonds for federal income tax purposes.

**SECTION 20. CONDITIONS PRECEDENT.**

A. All commitments of the Issuer are subject to the conditions that: (i) all regulatory or other governmental approvals requisite to the execution of the documents contemplated hereby shall have been obtained, (ii) the Issuer shall have received certificates and opinions of counsel, addressed to it, in form and substance reasonably satisfactory to the Issuer, (iii) provision shall be made to the satisfaction of the Issuer for the reimbursements of the Issuer at the closing of all costs and expenses incurred in connection with the approval and execution of the Bond Documents, (iv) the Issuer shall have received a Lender's Certificate from the Lender substantially in form and substance attached to the Financing Agreement as Exhibit C, and (v) the Issuer, its counsel and bond counsel shall have received and/or reviewed such other documents, instruments, studies, opinions, sureties and other matters as it shall in its sole discretion deem necessary or appropriate.

B. All Bond Documents and the Series 2014 Bonds shall contain an express provision that the Series 2014 Bonds, or the Issuer's obligations under the Bond Documents, as the case may be, shall be payable solely from loan repayments and Collateral provided under the Financing Agreement and the Promissory Note, and that neither the taxing power nor the faith or credit of the County, the Issuer, the State or of any political subdivision thereof are or ever shall be pledged to payment of the indebtedness or such obligations.

C. The Issuer's execution of the documents contemplated hereby is conditioned upon the Borrower's agreement to indemnify the Issuer for all reasonable expenses, costs, obligations, losses and liabilities of any nature whatsoever incurred by the Issuer, including fees and expenses of the Issuer's counsel, incurred in connection with, or arising out of, the Issuer's participation in the transactions contemplated by the Bond Documents, to the end that the Issuer will not suffer any out-of-pocket costs, losses or expenses as a result of the carrying out of any of its undertakings contained herein or therein. In furtherance of the foregoing, the Borrower shall agree to pay all such costs, expenses and fees incurred by the Issuer as of the closing date at or before closing and such payment shall constitute a condition precedent to closing, and shall pay any post closing costs or expenses incurred by the Issuer relating to the Series 2014 Bonds. By execution of the Financing Agreement, the Borrower shall be deemed to have expressly agreed to such indemnity and to the payments of such costs and expenses.

D. Any pecuniary liability or obligation of the Issuer in connection herewith shall be limited solely to the loan repayments derived by the Issuer from the Promissory Note and the

Financing Agreement (excluding the Issuer's rights to indemnification payments hereunder or thereunder), and nothing contained in this Resolution shall ever be construed to constitute a personal or pecuniary liability or charge against any member, officer or employee of the Issuer, and in the event of a breach of any undertaking on the part of the Issuer, no personal or pecuniary liability or charge payable directly or indirectly from any funds of the Issuer shall arise therefrom.

**SECTION 21. LAWS GOVERNING.** This Resolution shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Florida.

**SECTION 22. NO THIRD PARTY BENEFICIARIES.** Except as herein or in the documents herein mentioned otherwise expressly provided, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any Person other than the Issuer, the Lender and the Borrower any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents; this Resolution and such documents being intended to be and being for the sole and exclusive benefit of such parties.

**SECTION 23. SEVERABILITY.** If any one or more of the covenants, agreements, or provisions contained herein or in the Series 2014 Bonds shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions hereof and thereof and shall in no way affect the validity of any of the other provisions of this Resolution or of the Series 2014 Bond.

**SECTION 24. NOTICES.** Any notice, request, complaint, demand, communication or other paper given under or with respect to any Bond Document shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail to the Notice Address of the Issuer provided in the Financing Agreement.

**SECTION 25. REPEALER.** All resolutions or ordinances or parts thereof of the Issuer in conflict with the provisions herein contained are, to the extent of any such conflict, hereby superseded and repealed.

**SECTION 26. TEFRA APPROVAL.** Pursuant to and in accordance with the requirements of Section 147(f) of the Code, the Issuer hereby approves the issuance of the Bonds in an aggregate face amount not to exceed \$4,141,000.

**SECTION 27. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its passage and adoption.

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APPROVED AND ADOPTED by the City of Lakes Wales, Florida this 4<sup>th</sup> day of March, 2014.

(SEAL)

CITY OF LAKE WALES, FLORIDA

By: \_\_\_\_\_

Name: Eugene Fultz

Title: Mayor

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_

Name: Clara VanBlargan

Title: City Clerk

By: \_\_\_\_\_

Name: Albert C. Galloway, Jr.

Title: City Attorney

**EXHIBIT A**

**FORM OF FINANCING AGREEMENT**

## EXHIBIT B

### FORM OF DISCLOSURE LETTER

The undersigned, as purchaser (the "Purchaser"), proposes to purchase from the City of Lake Wales, Florida (the "Issuer") its \$4,141,000 Industrial Development Revenue Bonds, Series 2014 (the "Bonds"). Prior to the award of the Bonds, the following information is hereby furnished to the Issuer:

1. Set forth is an itemized list of the nature and estimated amounts of expenses to be incurred for services rendered to us in connection with the issuance of the Bond(such fees and expenses to be paid by the Lake Wales Charter Schools, Inc. (the "Borrower"):

\$\_\_\_\_\_

Clark, Campbell & Lancaster, P.A.  
Purchaser's Counsel Legal Fees

\$\_\_\_\_\_

Holland & Knight LLP  
Purchaser's Counsel Legal Fees

2. (a) No other fee, bonus or other compensation is estimated to be paid by the Purchaser in connection with the issuance of the Bonds to any person not regularly employed or retained by the Purchaser (including any "finder" as defined in Section 218.386(1)(a), Florida Statutes), except as specifically enumerated as expenses to be incurred by the Purchaser, as set forth in paragraph (1) above.

(b) No person has entered into an understanding with the Purchaser, or to the knowledge of the Purchaser, with the Issuer or Borrower, for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer or Borrower and the Purchaser or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Bonds.

3. The amount of the underwriting spread expected to be realized by the Purchaser is \$0.

4. The management fee to be charged by the Purchaser is \$0.

5. Truth-in-Bonding Statement:

The Bonds are being issued primarily to refinance a portion of the cost of the outstanding portion of a mortgage loan dated June 24, 2008, by and between the Borrower and Bank of the Ozarks, the proceeds of which were used for the acquisition, renovation, addition and equipping of improvements of approximately 10 acres of land together with four existing buildings totaling approximately 40,910 square feet and containing 23 classrooms, a cafeteria, a



kitchen, an auditorium, a library/media center, administrative offices, and athletic facilities located at 13901 Highway 27, Lake Wales, Florida 33859, and such other improvements, acquisitions, additions and renovations to the Edward W. Bok Academy.

Unless earlier prepaid, the Bonds are expected to be repaid by March 6, 2034; at an initial interest rate of \_\_\_\_%, as adjusted total interest paid over the life of the Bonds is estimated to be \$\_\_\_\_\_.

The Bonds are payable solely from amounts paid by the Borrower, in the manner and to the extent described in Resolution Nos. 2014-03 and 2014-04 of the Issuer adopted on February 18, 2014 and March 4, 2014, respectively (collectively, the "Resolution"). Issuance of the Bonds is estimated to result in an annual maximum of approximately \$0 of revenues of the Issuer not being available to finance the services of the Issuer during the life of the Bonds. This paragraph is provided pursuant to Section 218.385, Florida Statutes.

6. The name and address of the Purchaser is as follows:

Citizens Bank & Trust  
P.O. Box 3400  
Lake Wales, FL 33859

IN WITNESS WHEREOF, the undersigned has executed this Disclosure Letter on behalf of the Bank this 6th day of March, 2014.

CITIZENS BANK & TRUST

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C**

**FORM OF INDEMNITY AGREEMENT**

**FORM OF BOND**

THIS BOND IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A PERSON WHO IS AN "INSTITUTIONAL ACCREDITED INVESTOR" WITHIN THE MEANING OF REGULATION D UNDER THE SECURITIES ACT OF 1933 OR A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933. THE PURCHASER HEREOF AGREES TO PROVIDE NOTICE OF THE RESTRICTION ON TRANSFERS TO ANY PROPOSED TRANSFEREE OF AN OWNERSHIP INTEREST IN THIS PURCHASED BOND.

EACH TRANSFEREE OF THIS BOND, BY ITS PURCHASE HEREOF, REPRESENTS THAT SUCH TRANSFEREE IS AN "INSTITUTIONAL ACCREDITED INVESTOR" WITHIN THE MEANING OF REGULATION D UNDER THE SECURITIES ACT OF 1933 OR A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933 AND WILL ONLY TRANSFER, RESELL, REOFFER, PLEDGE OR OTHERWISE TRANSFER THIS BOND TO A SUBSEQUENT TRANSFEREE WHO IS AN "INSTITUTIONAL ACCREDITED INVESTOR" WITHIN THE MEANING OF REGULATION D UNDER THE SECURITIES ACT OF 1933 OR A "QUALIFIED INSTITUTIONAL BUYER" WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT OF 1933.

CITY OF LAKE WALES, FLORIDA  
INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(LAKE WALES CHARTER SCHOOLS, INC. PROJECT),  
SERIES 2014

<u>Dated Date</u>	<u>Interest Rate</u>	<u>Maturity Date</u>
March 6, 2014		March 6, 2034

The CITY OF LAKE WALES, FLORIDA (the "Issuer"), for value received, hereby promises to pay to the order of

CITIZENS BANK & TRUST

(the "Owner") or its successors or registered assigns, the principal sum of:

FOUR MILLION ONE HUNDRED FORTY-ONE THOUSAND AND 00/100 DOLLARS  
(\$4,141,000.00)

or such lesser amount as shall be outstanding hereunder as hereinafter provided and pursuant to the terms of the Financing Agreement, dated as of March 6, 2014, by and among the Issuer, Lake Wales Charter School, Inc. (the "Borrower"), and the Owner (the "Financing Agreement"), together with interest on the outstanding principal balance until payment in full. This Bond

shall bear interest at the Interest Rate (as defined in the Financing Agreement), which Interest Rate is subject to adjustment as provided in Section 3.13 of the Financing Agreement. Interest will be computed on the basis of the actual number of days elapsed over a year consisting of 360 days. The Borrower shall make equal monthly payments in the amount of \$23,500.00 to the Owner on the \_\_\_\_\_ day of each month, commencing \_\_\_\_\_, 2014, and continuing until the Maturity Date which payments shall be applied to interest and principal as provided in the Financing Agreement. This Bond shall mature on, and all unpaid principal and accrued but unpaid interest and all other amounts payable hereunder or payable under the Financing Agreement shall be due and payable on, the Maturity Date, subject to earlier optional prepayment by the Borrower as provided in the Financing Agreement. The principal of and interest on this Bond are payable in lawful currency of the United States of America.

All terms used herein in capitalized form, unless otherwise defined herein, shall have the meanings ascribed to such terms in the Financing Agreement.

A late charge shall be due and payable on any scheduled payment of principal of and, to the extent legally enforceable, interest on, this Bond that shall not have been paid by the tenth (10<sup>th</sup>) day following the date such scheduled payment is due and payable, in an amount equal to five percent (5%) of such scheduled payment. The foregoing fee is not a penalty, but liquidated damages to defray administrative and related expenses due to such late payment. The fee shall be immediately due and payable and shall be paid by the Borrower to the Owner without notice or demand. This provision for a fee is not and shall not be deemed a grace period, and Owner has no obligation to accept a late payment. Further, the acceptance of a late payment shall not constitute a waiver of any default then existing or thereafter arising under the Financing Agreement. The foregoing right to a late charge is in addition to, and not in limitation of, any other rights which the Owner may have upon the Borrower's failure to make timely payment of such principal and/or interest.

Upon not less than thirty (30) days' prior written notice given by the Borrower to the Owner, the Borrower may prepay the principal of this Bond, in whole or in part, at any time or times, as provided in Section 3.06 of the Financing Agreement, without prepayment fee or penalty (but with accrued interest on any prepayment amount).

The principal of and interest on this Bond are payable solely from and secured by (i) payments derived by the Issuer from the Borrower's repayment of the Loan and (ii) any amounts realized by the Owner with respect to the collateral granted as security for the Loan and the Bonds, including under the Mortgage, all of which will be assigned by the Issuer to the Owner in satisfaction of all of the Issuer's obligations under this Bond. The Issuer shall never be required to (i) levy ad valorem taxes on any property within its territorial limits to pay the principal of and interest on this Bond or to make any other payments provided for under the Financing Agreement, (ii) pay the same from any funds of the Issuer or (iii) require or enforce any payment or performance by the Borrower as provided by the Financing Agreement unless the Issuer's expenses in respect thereof shall be paid from moneys derived under the Financing Agreement or shall be advanced to the Issuer for such purpose, and the Issuer shall receive

indemnity for such expenses to its satisfaction. This Bond shall not constitute a lien upon any property or revenues of the Issuer.

**NEITHER THE ISSUER, THE STATE, NOR ANY OTHER POLITICAL SUBDIVISION THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR PURCHASE PRICE OF OR INTEREST ON THIS BOND OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE LOAN PAYMENTS AND OTHER REVENUES PLEDGED THEREFOR. NEITHER SHALL THIS BOND NOR THE INTEREST THEREON BE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR ANY AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THIS BOND. THIS BOND SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR ANY AGENCY THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION AND DOES NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR ANY AGENCY THEREOF. THE LIABILITY OF THE ISSUER UNDER THE FINANCING AGREEMENT AND THIS BOND, OR ANY PROVISION OR CONDITION HEREOF OR THEREOF, OR OF ANY AGREEMENT IN THE FINANCING AGREEMENT OR IN THIS BOND CONTAINED, OR OF ANY WARRANTY HEREIN OR IN THIS BOND INCLUDED, OR FOR ANY BREACH OF DEFAULT BY THE ISSUER OF ANY OF THE FOREGOING, SHALL BE LIMITED SOLELY AND EXCLUSIVELY TO THE LOAN PAYMENTS AND OTHER REVENUES AND COLLATERAL PLEDGED THEREFOR. THE ISSUER SHALL NOT BE REQUIRED TO EXECUTE OR PERFORM ANY OF ITS DUTIES, OBLIGATIONS, POWERS, OR COVENANTS UNDER THE FINANCING AGREEMENT OR UNDER THE BONDS EXCEPT TO THE EXTENT THE LOAN PAYMENTS AND OTHER REVENUES AND COLLATERAL PLEDGED THEREFOR ARE AVAILABLE THEREFOR. NO PRESENT OR FUTURE DIRECTOR, OFFICER, MEMBER, COMMISSIONER, EMPLOYEE OR AGENT OF THE ISSUER SHALL BE PERSONALLY LIABLE BY REASON OF THE ISSUANCE OF THIS BOND OR THE EXECUTION OF THE FINANCING AGREEMENT, AND NO COVENANT, AGREEMENT OR OBLIGATION CONTAINED IN THIS BOND OR IN THE FINANCING AGREEMENT SHALL BE DEEMED TO BE A COVENANT, AGREEMENT OR OBLIGATION OF ANY PRESENT OR FUTURE DIRECTOR, OFFICER, MEMBER, COMMISSIONER, EMPLOYEE OR AGENT OF THE ISSUER IN HIS OR HER INDIVIDUAL CAPACITY.**

Notwithstanding any provision contained herein to the contrary, in no event shall the interest contracted for, charged or received in connection with the Bonds (including any other costs or considerations that constitute interest under the laws of the State which are contracted for, charged or received) exceed the maximum rate of interest allowed under the laws of the State. In the event this Bond is prepaid in accordance with the provisions hereof, then such amounts that constitute payments of interest, together with any costs or considerations which constitute interest under the laws of the State, may never exceed an amount which would result

in payment of interest at a rate in excess of the non-usurious interest allowed by the laws of the State.

All covenants, conditions and agreements contained in the Financing Agreement are hereby incorporated by reference in this instrument as though fully set forth herein. In the event of conflict between this Bond and the Financing Agreement, the terms and conditions of the Financing Agreement shall control. This Bond shall be deemed to be in default upon the occurrence of an Event of Default under the terms of the Financing Agreement. Upon the occurrence of such an Event of Default the Owner of this Bond may, at its option, declare this Bond immediately due and payable without notice regardless of the date of maturity and shall have all other rights and remedies as provided in the Financing Agreement. Failure at any time to exercise this option shall not constitute a waiver of the right to exercise the same at any other time. Upon an Event of Default, the Interest Rate shall be increased to the Default Rate effective as of the date of such Event of Default.

The Owner is hereby authorized to disclose any financial or other information about the Issuer and Borrower related to the Loan Documents to any regulatory body or agency having jurisdiction over the Owner and to any present, future or prospective participant or successor in interest in any loan or other financial accommodation made by the Owner to the Issuer or the Borrower. The information provided may include, without limitation, amounts, terms, balances, payment history, return item history and any financial or other information about the Issuer or Borrower related to the Loan Documents.

If the Owner retains the services of counsel by reason of a claim of a default or an event of default under this Bond or under any of the other Loan Documents, or on account of any matter involving this Bond, or for examination of matters subject to the Owner's approval under the Loan Documents, all costs of suit and all reasonable attorneys' fees and such other reasonable expenses so incurred by the Owner shall be paid by the Borrower on demand, and shall be deemed part of the obligations evidenced hereby.

If, after receipt of any payment of all or any part of this Bond, the Owner is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Bond and the other Loan Documents shall continue in full force and effect or be reinstated, as the case may be, and the Borrower shall be liable for, and shall indemnify, defend and hold harmless the Owner with respect to, the full amount so surrendered (but solely from the sources described in the Financing Agreement). The provisions of this paragraph shall survive the cancellation or termination of this Bond and shall remain effective notwithstanding the payment of the obligations evidenced hereby, the release of any security interest, lien or encumbrance securing this Bond or any other action which the Owner may have taken in reliance upon its receipt of such payment. Any cancellation, release or other such action shall be deemed to have been conditioned upon any payment of the obligations evidenced hereby having become final and irrevocable.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in connection with the issuance of this Bond, exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, and that the issuance of this Bond does not violate any constitutional or statutory limitation.

This Bond is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code – Investment Securities of the State of Florida.

The Issuer hereby waives presentment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Bond and any other notices that might otherwise be require as a condition to exercise of any rights of the Owner hereof.

This Bond has been designated as a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code.

**THE ISSUER AND, BY ACCEPTANCE OF THIS BOND, THE OWNER EACH KNOWINGLY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR LEGAL PROCEEDINGS BASED UPON THIS BOND OR ARISING OUT OF, UNDER OR IN CONJUNCTION WITH THIS BOND OR THE LOAN DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, ACTS OR OMISSIONS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.**

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Issuer has issued this Bond and has caused the same to be executed by the Mayor and attested and sealed by the City Clerk, all as of the Dated Date set forth above.

CITY OF LAKE WALES, FLORIDA

(SEAL)

By: \_\_\_\_\_  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Title: City Clerk

[Signature Page | Bond]



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**FINANCING AGREEMENT**

**Among**

**CITY OF LAKE WALES, FLORIDA,  
as Issuer**

**and**

**LAKE WALES CHARTER SCHOOLS, INC.,  
as Borrower**

**and**

**CITIZENS BANK & TRUST,  
as Lender**

**Dated as of March 6, 2014**

**Relating to**

**City of Lake Wales, Florida  
Industrial Development Revenue Bonds  
(Lake Wales Charter Schools, Inc. Project),  
Series 2014**

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## TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE I DEFINITIONS</u> .....	2
<u>Section 1.01. Definitions.</u> .....	2
<u>Section 1.02. Computations of Time Periods.</u> .....	8
<u>Section 1.03. Accounting Terms.</u> .....	8
<u>ARTICLE II REPRESENTATIONS</u> .....	8
<u>Section 2.01. Representations by the Issuer.</u> .....	8
<u>Section 2.02. Representations by the Borrower.</u> .....	8
<u>ARTICLE III THE BONDS; LOAN; LOAN PAYMENTS</u> .....	14
<u>Section 3.01. Agreement to Issue and Purchase Bonds.</u> .....	14
<u>Section 3.02. Loan; Use of Proceeds.</u> .....	16
<u>Section 3.03. Lien on Loan Funds.</u> .....	Error! Bookmark not defined.
<u>Section 3.04. Loan Repayment.</u> .....	17
<u>Section 3.05. To Whom Payments are Due; Restrictions on Transfers.</u> .....	18
<u>Section 3.06. Prepayment of Bonds.</u> .....	19
<u>Section 3.07. Satisfaction of Obligation.</u> .....	19
<u>Section 3.08. Issuer's Performance of the Borrower's Obligations.</u> .....	19
<u>Section 3.09. Security Interest and Assignment; Acceptance by the Lender.</u> .....	19
<u>Section 3.10. Operation and Maintenance of the Project.</u> .....	19
<u>Section 3.11. No Warranty of Condition or Suitability by Issuer.</u> .....	20
<u>Section 3.12. Certain Matters Regarding Bank Qualification.</u> .....	20
<u>Section 3.13. Adjustments to Interest Rate.</u> .....	20
<u>ARTICLE IV COVENANTS</u> .....	22
<u>Section 4.01. Notices of Material Events.</u> .....	22
<u>Section 4.02. Existence; Conduct of Business.</u> .....	22
<u>Section 4.03. Compliance with Laws, Etc.</u> .....	23
<u>Section 4.04. Books and Records; Financial Information; Financial</u> <u>Statements.</u> .....	23
<u>Section 4.05. Visitation, Inspection, Etc.</u> .....	23
<u>Section 4.06. Maintenance of Properties; Insurance.</u> .....	23
<u>Section 4.07. Use of Bond Proceeds.</u> .....	Error! Bookmark not defined.
<u>Section 4.08. Restriction Against Religious Activities.</u> ...	Error! Bookmark not defined.
<u>ARTICLE V REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE</u> <u>LENDER</u> .....	23
<u>ARTICLE VI THE BORROWER'S INDEMNIFICATION OF ISSUER AND LENDER</u> .....	25
<u>Section 6.01. Indemnification of Issuer and Lender; No Issuer or Lender</u> <u>Liability; Damage Claims.</u> .....	25

<u>ARTICLE VII TERM AND TERMINATION</u> .....	26
<u>Section 7.01. Term</u> .....	26
<u>Section 7.02. Termination</u> .....	26
<u>ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES</u> .....	26
<u>Section 8.01. Events of Default</u> .....	26
<u>Section 8.02. Notice of Defaults</u> .....	29
<u>Section 8.03. Waivers by Lender</u> .....	29
<u>ARTICLE IX MISCELLANEOUS</u> .....	29
<u>Section 9.01. Issuer and the Lender Officers Not Liable</u> .....	29
<u>Section 9.02. Enforcement</u> .....	29
<u>Section 9.03. Survival of Representations and Warranties</u> .....	29
<u>Section 9.04. Expenses</u> .....	29
<u>Section 9.05. Amendment of Agreement</u> .....	30
<u>Section 9.06. Prepayment or Acceleration of Bonds</u> .....	30
<u>Section 9.07. Registration, Transfer and Exchange</u> .....	30
<u>Section 9.08. Surplus Funds</u> .....	31
<u>Section 9.09. [Reserved]</u> .....	31
<u>Section 9.10. Notices; Demands; Requests</u> .....	31
<u>Section 9.11. Satisfaction Requirement</u> .....	32
<u>Section 9.12. Applicable Law and Venue</u> .....	32
<u>Section 9.13. Consents and Approvals</u> .....	32
<u>Section 9.14. Multiple Counterparts</u> .....	32
<u>Section 9.15. Severability</u> .....	32
<u>Section 9.16. The Borrower's Remedies</u> .....	33
<u>Section 9.17. Extent of Covenants</u> .....	33
<u>Section 9.18. Limitation on Issuer's Liability</u> .....	33
<u>Section 9.19. Waiver of Jury Trial</u> .....	34
<u>Section 9.20. Limitation on Liability; Waiver of Punitive Damages</u> .....	34
<u>Section 9.21. Anti-Terrorism Laws</u> .....	35
<u>Section 9.22. Set off</u> .....	36
<u>Section 9.23. Certain Waivers</u> .....	36

- EXHIBIT A – FORM OF BOND
- EXHIBIT B – PROJECT DESCRIPTION
- EXHIBIT C – FORM OF LENDER'S CERTIFICATE
- EXHIBIT D - FORM OF PROMISSORY NOTE

## FINANCING AGREEMENT

THIS FINANCING AGREEMENT, dated as of March 6, 2014 (as amended and supplemented from time to time, this "Financing Agreement"), by and among CITY OF LAKE WALES, FLORIDA, a municipality of the State of Florida (the "Issuer"), LAKE WALES CHARTER SCHOOLS, INC., a Florida not-for-profit corporation (the "Borrower"), and CITIZENS BANK & TRUST, a national banking association authorized to do business in Florida, and its successors, assigns and any transferee of the Bonds (as defined herein) (the "Lender").

### WITNESSETH:

**WHEREAS**, the Issuer is a municipality of the State of Florida (the "State") under the Constitution of the State, Chapter 166, Florida Statutes, the Charter of the Issuer and other applicable provisions of law, and as such has home rule powers and is a "local agency," as defined in Section 159.27(2), Florida Statutes, which is authorized and has the power to issue revenue bonds under the provisions of the Act (as hereinafter defined), to finance and refinance the costs of educational facilities to be operated by private, not-for-profit corporations, and to make and execute financing agreements, contracts, deeds and other instruments necessary or convenient for the purpose of facilitating the financing or refinancing of certain projects required or useful for educational facilities, including financing and refinancing the acquisition of furnishings, machinery, equipment, land, rights in land and other appurtenances and facilities related thereto, to improve the education, health and living conditions of the people of the State and of the Issuer, increase opportunities for gainful employment and purchasing power and increase educational opportunities and thereby improve the prosperity and welfare of the Issuer, the State and the citizens and inhabitants thereof, and to provide such financing through the issuance of revenue obligations such as bonds and notes;

**WHEREAS**, the Borrower has incurred prior obligations, the proceeds of which were used to finance constructing, renovating, improving and equipping capital improvements to educational facilities including the Edward W. Bok Academy (the "Project"), and to pay costs of issuance;

**WHEREAS**, the Borrower has now requested that the Issuer issue its Industrial Development Revenue Bonds (Lake Wales Charter Schools, Inc. Project), Series 2014 (the "Bonds") in the total principal amount of \$4,141,000, for the purpose of obtaining funds to loan to the Borrower pursuant to this Financing Agreement to refinance the costs of the Project, all as more particularly described in this Financing Agreement;

**WHEREAS**, the Issuer has determined to issue, sell and deliver the Bonds to the Lender on the terms provided herein;

**WHEREAS**, the Borrower's obligations under this Financing Agreement will be secured by the Mortgage (as defined herein) filed for record in the Public Records of Polk County, Florida, made by Borrower, as mortgagor, to the Lender and the Issuer, as mortgagees; and

**WHEREAS**, the Bonds will be payable from and secured by the Borrower's undertakings under this Financing Agreement and the Collateral (herein defined) and the Issuer's right, title and interest herein, which will be assigned to the Lender (except the right to receive notices, restrict transfers, have no personal liability, receive fees, be reimbursed for expenses and to be indemnified under this Financing Agreement and certain enforcement rights as set forth in this Financing Agreement) in satisfaction of all of the Issuer's obligations with respect to the Bonds; and

**WHEREAS**, the Issuer, at a meeting duly convened and held, has authorized the execution and delivery of this Financing Agreement.

**NOW, THEREFORE**, in consideration of the respective representations and agreements hereinafter contained, the parties hereto agree as follows (provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money and any obligation or liability it may incur for damages resulting from the breach of any covenant, undertaking, agreement or warranty herein made shall not be a general debt on its part or a mortgage or pledge of its full faith and credit or taxing power or any of its real estate, property or franchises but shall be payable solely out of the proceeds derived from this Financing Agreement, the Bonds and the sale of the Bonds):

## **DEFINITIONS**

**Definitions.** In addition to the words and terms elsewhere defined in this Financing Agreement, capitalized terms used herein shall have the following meanings unless the context or use indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms herein defined:

"Act" means, collectively, the Constitution of the State of Florida, Chapter 166, Florida Statutes, Chapter 159, Part II, Florida Statutes, the municipal charter of the Issuer and other applicable provisions of law.

"Adjusted BQ Rate" means, upon a loss of BQ Status, the interest rate per annum that shall provide the Owner with the same after tax yield that the Owner would have otherwise received had the Loss of BQ Status not occurred, taking into account the Margin Rate Factor and the increased taxable income of the Owner as a result of such Loss of BQ Status. The Owner shall provide the Borrower with a written statement explaining the calculation of the Adjusted BQ Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Borrower.

"Adjusted Rate" means the rate equal to the FHLB 7 Year Principal Reducing Credit (PRC) Rate plus 1.13% as of the First Adjustment Date or the Second Adjustment Date, as applicable.

"Affiliate" means, with respect to any Person, any other Person which controls, is controlled by or is under common control with, such Person, whether by (a) direct or indirect ownership of voting securities, (b) other right to elect or select a majority of directors or members, (c) commonality of members of governing bodies or of officers, (d) direct or indirect membership, or (e) direct or indirect ownership of any other type of equity (including convertible debt) interests. "Control," for purposes of this definition, means the power to determine who the officers or directors of a Person will be or what the policies or fundamental business decisions of a Person are or will be, directly or in concert with one or more Affiliates.

"Applicable Law" means all applicable provisions of all constitutions, statutes, rules, regulations and all binding orders, judgments and decrees of any Governmental Authority.

"Authorized Representative" means, with respect to the Borrower, **[the president, the chief executive officer or chief financial officer]** of the Borrower.

"Bond Counsel" means, initially, the law firm of Bryant Miller Olive P.A., and thereafter another firm or firms of attorneys approved by the Issuer which is of nationally recognized standing in matters pertaining to the exclusion from gross income of interest on Bonds for federal income tax purposes issued by states and political subdivisions, duly admitted to practice law before the highest court of any state of the United States or the District of Columbia.

"Business Day" means any day on which commercial banks located in Lake Wales, Florida are required or permitted by law to be open for the purpose of conducting a commercial banking business, other than (i) a Saturday or Sunday or (ii) a day on which the Lender is closed for business in Florida.

"Certificate of Deposit" means a Certificate of Deposit **[identifying information?]** in the amount of \$2,000,000 to be held in the name of the Borrower with the Lender or with another institution acceptable to the Lender.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, including, when appropriate, the statutory predecessor thereof, or any applicable corresponding provisions of any future laws of the United States of America relating to federal income taxation, and except as otherwise provided herein or required by the context hereof, including interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final or temporary regulations and also including regulations issued pursuant to the statutory predecessor of the Code), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings), and applicable court decisions.

"Collateral" means, collectively, the collateral granted under the Mortgage, including the real property described therein and all improvements currently thereon or to be added and the Certificate of Deposit.

"Date of Issuance" means the date of issuance of the Bonds.

"Default" means an event which, with the passing of time or the giving of notice, or both, would become an Event of Default.

"Default Rate" means the lower of (a) eighteen percent (18%) per annum and (b) the maximum interest rate legally permitted.

"Determination of Taxability" means the occurrence after the date hereof of the adoption or taking effect of any law, rule or regulation that changes the ability of the Owners to exclude all or a portion of the interest on the Bonds from gross income for Federal income tax purposes, or a final decree or judgment of any Federal court or a final action of the Internal Revenue Service determining that interest paid or payable on all or a portion of any Bond is or was includable in the gross income of an Owner for Federal income tax purposes; provided, that no such decree, judgment, or action will be considered final for this purpose, however, unless the Issuer has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same, either directly or in the name of any Owner, and until the conclusion of any appellate review, if sought.

"Environmental Agreement" means that certain Environmental Compliance Indemnity Agreement, dated March 6, 2014, between the Borrower and the Lender, as amended and supplemented from time to time.

"Event of Default" has the meaning ascribed to such term in Section 8.01 hereof.

"Expenses" has the meaning ascribed to such term in Section 3.04(c) hereof.

"Facilities" means all facilities now or hereafter owned or leased by the Borrower including, but not limited to, the Site and all improvements, fixtures and personal property owned by the Borrower and now located on the Site, including the Project.

"Favorable Tax Opinion" means an Opinion of Counsel stating in effect that the proposed action, together with any other changes with respect to the Bonds made or to be made in connection with such action, will not cause interest on the Bonds to be includable in gross income of the Owner for purposes of federal income taxation.

"First Adjusted Rate" means the rate equal to the Adjusted Rate on the First Adjustment Date.

"First Adjustment Date" means the fifth anniversary of the date of issuance of the Bonds.

"Fiscal Year" means the period beginning **[July 1]** of each year and ending on **[June 30]** of the next year, or any other twelve-month period hereafter designated by the Borrower as the fiscal year of the Borrower.

"GAAP" means accounting principles generally accepted in the United States of America as from time to time in effect that are consistently applied and, when used with respect to the Borrower, that are consistent with the accounting practice of the Borrower, as reflected in the audited financial statements for the Borrower.

"Governmental Authority" means any government or political subdivision, or any agency, board, commission, department or instrumentality of either, or any court, tribunal, central bank or arbitrator.

"Indemnity Agreement" means the Indemnity and Hold Harmless Agreement from the Borrower to the Issuer dated March 6, 2014.

"Interest Rate" shall mean \_\_\_\_% through and including the day prior to the First Adjustment Date, the First Adjusted Rate from the First Adjustment Date to the day prior to the Second Adjustment Date, and thereafter, the Second Adjusted Rate.

"Loan" means the loan of the proceeds of the Bonds from the Issuer to the Borrower pursuant to this Financing Agreement.

"Loan Documents" means collectively this Financing Agreement, the Promissory Note, the Bonds, the Mortgage, the Environmental Agreement, the Indemnity Agreement and any other documents or instruments now or hereafter evidencing, securing or guaranteeing obligations under the Bonds or this Financing Agreement, as the same may be amended, modified or supplemented from time to time in accordance with their respective terms.

"Loss of BQ Status" means a determination by the Owner that the Bonds are not a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3) of the Code (or any successor provision).

"Margin Rate Factor" means the fraction the numerator of which is equal to one (1) minus the Maximum Federal Corporate Tax Rate on the date of calculation and the denominator of which is 0.65. The Margin Rate Factor shall be 0.65/0.65 or 1.0 so long as the Maximum Federal Corporate Tax Rate shall be 35% and thereafter shall increase from time to time effective as of the effective date of any decrease in the Maximum Federal Corporate Tax Rate.

"Material Adverse Effect" means, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singularly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences whether or not related, a material adverse change in, or a material adverse effect on, (a) the business, results of operations, financial condition, assets, liabilities or prospects of the Borrower taken as a whole, (b) the ability of the Borrower to perform any of its obligations under the Loan Documents, (c) the rights and remedies of the Lender under any of the Loan Documents or (d) the legality, validity or enforceability of any of the Loan Documents.



"Maturity Date" has the meaning ascribed thereto in Section 3.01(a) hereof.

"Maximum Federal Corporate Tax Rate" shall mean the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, determined without regard to tax rate or tax benefit make-up provisions such as the last two sentences of Section 11(b)(1) of the Code, as in effect from time to time (or, if as a result of a change in the Code the rate of income taxation imposed on corporations shall not be applicable to the Owners, the maximum statutory rate of federal income taxation which could apply to the Owners). The Maximum Federal Corporate Tax Rate on the date of execution of this Financing Agreement is 35%.

"Mortgage" means that certain Mortgage, Security Agreement, Financing Statement and Assignment of Rents, dated March 6, 2014, made by the Borrower in favor of the Lender and the Issuer, as assigned by the Issuer to the Lender, as amended and restated, supplemented or otherwise modified from time to time.

"Opinion of Counsel" means an opinion from Bond Counsel, or if not an opinion to be delivered by Bond Counsel then an opinion from an attorney or firm of attorneys acceptable to the Issuer and the Lender with experience in the matters to be covered in the opinion.

"Owner" means the Person or Persons in whose name each Bond is registered on the books kept and maintained by the Borrower as bond registrar. The initial Owner of the Bonds is Citizens Bank & Trust.

"Person" means any individual, partnership (general or limited), joint venture, corporation, limited liability company, association, trust, firm or other enterprise or any government or political subdivision or agency thereof.

"Prior Obligation" means the outstanding portion of the mortgage loan dated June 24, 2008 between the Borrower and Bank of the Ozarks incurred to finance the costs of the Project.

"Project" means the project financed or refinanced with proceeds of the Prior Obligation as described on Exhibit B hereto.

"Promissory Note" means the promissory note of the Borrower evidencing its obligations to repay amounts due hereunder, as described in Section 3.04(a) hereof.

"Payment Date" means the \_\_\_\_\_ day of each month, commencing on \_\_\_\_\_, 2014, and the Maturity Date.

"Reserved Rights" means the right of the Issuer to receive notices, give consents pursuant to Section 8.03 hereof, restrict transfers of the Bonds, be reimbursed for Expenses, be indemnified under this Financing Agreement and the right to enforce in its own name the obligations of the Borrower under Sections 3.08 and 3.10 hereof.

"Resolution" means collectively, the resolutions adopted by the Issuer on February 18, 2014 and March 4, 2014, authorizing the issuance, execution and delivery of the Bonds, the execution and delivery of this Financing Agreement and of other documents related thereto.

"Second Adjusted Rate" means the rate equal to the Adjusted Rate on the Second Adjustment Date.

"Second Adjustment Date" means the tenth anniversary of the date of issuance of the Bonds.

"Site" means the real property described on Exhibit A to the Mortgage, less any removals therefrom made in the manner permitted by the Mortgage, and leasehold interests, easements, licenses, and rights in such property, less any interests in such property, easements, licenses, rights of way or similar rights and privileges as may be released or transferred by the Borrower to another Person in accordance with the provisions of this Financing Agreement and the Mortgage, or taken by the exercise of the power of eminent domain.

"Solvent" means, when used with respect to any Person, that (a) such Person does not intend to incur, and does not believe and has no reason to believe that it will incur, debts beyond its ability to pay as they become due, (b) the sum of such Person's assets is greater than all of such Person's liabilities at a fair valuation, (c) such Person has sufficient cash flow to enable it to pay its debts as they become due and (d) such Person does not have unreasonably small capital to carry on such Person's business as theretofore operated and all businesses in which such Person is about to engage. "Fair valuation" is intended to mean that value which can be obtained if the assets are sold within a reasonable time in arm's-length transactions in an existing and nontheoretical market.

"Subsidiary" means, as to any entity, any other entity which is an Affiliate of such entity by virtue of such entity's control over the Affiliate, either by itself or through any other Subsidiary.

"Taxable Period" means the period of time between (a) the date that interest on the Bonds is deemed to be includable in the gross income of the owner thereof for federal income tax purposes as a result of a Determination of Taxability, and (b) the date of the Determination of Taxability and after which interest is accruing and being paid at the Taxable Rate.

"Taxable Rate" means, upon a Determination of Taxability, the interest rate per annum that shall provide the Owners with the same after tax yield that the Owners would have otherwise received had the Determination of Taxability not occurred, taking into account the increased taxable income of the Owners as a result of such Determination of Taxability. The Owners shall provide the Issuer with a written statement explaining the calculation of the Taxable Rate, which statement shall, in the absence of manifest error, be conclusive and binding on the Issuer.

"Tax Agreement" means that certain Tax Regulatory Agreement dated March 6, 2014, entered into by the Issuer and the Borrower in connection with the issuance of the Bonds.

"Tax-Exempt Organization" means a not-for-profit corporation and an organization described in Section 501(c)(3) of the Code.

"Term" shall have the meaning ascribed to such term in Section 7.01 hereof.

**Computations of Time Periods.** Except as otherwise provided herein, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding."

**Accounting Terms** All accounting terms not specifically defined herein shall be construed in accordance with GAAP consistently applied, except as otherwise stated herein. Whenever accounting or other terms are to be determined on a "consolidated basis," and/or "combined basis" such consolidation and/or combination shall be of the subject Person and all Subsidiaries and Affiliates thereof with whom its financial statements would be consolidated and/or combined in accordance with GAAP applicable to such entities.

## REPRESENTATIONS

**Representations by the Issuer.** The Issuer makes the following representations as the basis for the undertakings of the Borrower and the Lender herein contained:

(a) The Issuer is a municipality duly created and existing under the laws of the State, and has the power under the Act to enter into the transactions contemplated by this Financing Agreement and to carry out its obligations hereunder. The authorized officers of the Issuer, pursuant to the Resolution, have been duly authorized to execute, assign and deliver this Financing Agreement, and to execute and deliver the Bonds.

(b) The Issuer proposes to issue its Bonds, in the principal amount of \$4,141,000, for the purpose of providing funds to refinance the Project. The Bonds will mature on the Maturity Date, bear interest at the Interest Rate, be prepayable at any time without premium or penalty as provided in the Bonds and have the other terms and provisions as set forth therein. The Issuer will assign and convey to the Lender all of its rights, title and interests in and under this Financing Agreement (except for its Reserved Rights) and the Collateral as security for payment of the principal of, premium, if any, and interest on the Bonds.

**Representations by the Borrower.** The Borrower makes the following representations as the basis for the undertakings of the Issuer and the Lender herein contained:

(a) The Borrower (i) is a Tax-Exempt Organization and is a not-for-profit corporation duly organized, existing and in good standing under the laws of the State, (ii) is duly qualified to do business in the State, and (iii) conducts business only in the State.

(b) The Borrower has the power and authority to enter into, execute and deliver this Financing Agreement, to borrow the proceeds of the Bonds from the Issuer and to perform its obligations under and consummate the transactions contemplated by this Financing Agreement, and the Loan Documents and has by proper corporate action duly authorized the execution and delivery of this Financing Agreement and the Loan Documents.

(c) This Financing Agreement and each Loan Document is a valid and binding agreement of the Borrower, enforceable in accordance with its terms, except as enforcement thereof may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other laws of general application affecting remedies or creditors' rights, from time to time in effect, and except that the availability of specific performance or of injunctive relief is subject to the discretion of the court before which any proceedings may be brought.

(d) The execution and delivery of this Financing Agreement and the Loan Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of or compliance with the terms and conditions hereof and thereof will not (with the passage of time or the giving of notice, or both) conflict with or result in or constitute a material breach of or material default under any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Borrower is a party or by which it or any of its property is bound, or violate any provision of the Articles of Incorporation or Bylaws of the Borrower, or of any constitutional or statutory provision, or of any order, rule or regulation of any court or governmental authority applicable to the Borrower or its property.

(e) The Borrower has the requisite authority to own and operate its Facilities or to cause such Facilities to be operated and to carry on its business, and it has obtained or caused to be obtained all material permits, certificates, licenses, consents and approvals as are necessary or required.

(f) The Borrower owns, or is licensed, or otherwise has the right, to use, all accreditations, patents, trademarks, service marks, trade names, copyrights, franchises, licenses, and other intellectual property material to its business, and the use thereof by the Borrower does not infringe on the rights of any other Person.

(g) The Facilities of the Borrower currently are insured with financially sound and reputable insurance companies in such amounts and with such deductibles and covering such risks as are customarily carried by companies engaged in similar business and owning similar properties in comparable locations to those where the Borrower operates.

(h) The proceeds of the Bonds will be used solely for the purposes described herein and in the recitals to this Financing Agreement.

(i) The Borrower has obtained or has caused to be obtained or will obtain or cause all requisite approvals of the State and other federal, regional and local governmental bodies. The Project is in compliance with applicable federal, state and local zoning, subdivision, environmental, pollution control and other laws, rules, regulations, codes and ordinances.

(j) No litigation, proceedings or investigations are pending or to its knowledge threatened against the Borrower or its property except litigation, proceedings or investigations being defended by or on behalf of the Borrower in which the probable ultimate recoveries and the estimated costs and expenses of defense (i) will be entirely within the Borrower's applicable self-insurance and insurance policy limits (including primary and excess insurance policies and subject to a quota share arrangement and applicable deductibles) or (ii) will not have a Material Adverse Effect on the operations or condition, financial or otherwise, of the Borrower. No litigation, investigations or proceedings are now pending or, to its knowledge, threatened against the Borrower that would in any manner challenge the validity of, or adversely affect the corporate existence or powers of the Borrower to enter into and carry out the transactions described in or contemplated by, this Financing Agreement or the other Loan Documents, or the status of the Borrower as a Tax-Exempt Organization.

(k) The Project promotes and enhances the public purposes set forth in the Act and will benefit the economy of the Issuer.

(l) The costs to be paid from the proceeds of the Bonds will be authorized expenditures pursuant to the Act. The Borrower operates the Project in a manner such that the Project constitutes a capital project permitted to be financed or refinanced with the proceeds of the Bonds pursuant to the Act, and will cause the Project to be so operated until the Bonds are fully paid.

(m) None of the proceeds of the Bonds will be used directly or indirectly to pay, or directly or indirectly to refund indebtedness the proceeds of which were used to pay, for the acquisition, construction, renovation, remodeling or equipping or any of the expenses of any institution, place or building, or any portion thereof, primarily used or to be used for sectarian instruction or study or as a place solely for devotional activities or religious worship or in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis or other similar persons in the field of religion.

(n) The Borrower will not take or omit to take any action which would impair the exclusion of interest on the Bonds from gross income for federal income tax purposes.

(o) All of the representations, warranties and covenants of the Borrower contained in the Tax Agreement are hereby reaffirmed and incorporated herein by this reference.

(p) The audited Statements of Financial Position of the Borrower for the most recent Fiscal Year, and the related Statements of Activities and Changes in Net Assets, and Statements of Cash Flows, for the Fiscal Year then ended copies of which have been furnished to the Lender, are correct, complete and fairly present the consolidated financial condition of the Borrower and any other entities described therein as at the dates of said financial statements, and the results of its operations for such period. The Borrower has no material liabilities as of the date of this Financing Agreement that are not provided for or reflected in such financial statements, or referred to in the notes thereto. All such financial statements have been prepared in

accordance with GAAP applied on a consistent basis maintained throughout the periods involved.

(q) The Borrower is not an "investment company" nor is it "controlled" by an "investment company," as such terms are defined in, or subject to regulation under, the Investment Company Act of 1940, as amended, nor is it otherwise subject to any other regulatory scheme limiting its ability to incur debt or requiring any approval or consent from, or registration or filing with, any Governmental Authority in connection therewith.

(r) The Borrower has timely filed or caused to be filed all federal income tax returns and all other material tax returns that are required to be filed by it, and has paid all taxes shown to be due and payable on such returns or on any assessments made against it or its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, except where the same are currently being contested in good faith by appropriate proceedings and for which the Borrower has set aside on its books adequate reserves in accordance with GAAP. As of the Date of Issuance, the charges, accruals and reserves on the books of the Borrower in respect of such taxes are adequate, and no tax liabilities that could be materially in excess of the amount so provided are anticipated.

(s) None of the proceeds of the Bonds will be used directly or indirectly for "purchasing" or "carrying" any "margin stock" with the respective meanings of each of such terms under Regulation U (the "Margin Regulations") as now and from time to time hereafter in effect or for any purpose that violates the provisions of the applicable Margin Regulations. The Borrower is not engaged principally, nor is one of its important activities the business of extending credit for the purpose of purchasing or carrying "margin stock."

(t) The Borrower has disclosed to the Lender all agreements, instruments, and corporate or other restrictions to which the Borrower is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect on the business, assets or operations of the Borrower. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrower to the Lender in connection with this Financing Agreement (as modified or supplemented by any other

information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in light of the circumstances under which they were made, not misleading; provided, that with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

(u) There are no strikes, lockouts or other material labor disputes or grievances against the Borrower or, to the knowledge of the Borrower, threatened against or affecting the Borrower, and no significant unfair labor practice, charges or grievances are pending against the Borrower, or to the knowledge of the Borrower, threatened against the Borrower before any Governmental Authority.

(v) The Borrower does not "control" the Lender, either directly or indirectly through one or more controlled companies, within the meaning of Section 2(a)(9) of the Investment Company Act of 1940.

(w) The Mortgage and any UCC-1 Financing Statements, along with all actions required to fully perfect the Lender's liens and security interests thereunder, which actions have been taken, create and constitute valid and perfected security interests in all of the Collateral described therein, and are enforceable as against all third parties.

(x) After giving effect to the execution and delivery of this Financing Agreement and the Loan Documents, the Borrower is Solvent.

(y) The Borrower is in compliance, in all material respects, with (i) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001). No part of the proceeds of the Bonds will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain



or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

(z) As of the date of this Financing Agreement, the Borrower is a Tax-Exempt Organization; the Borrower is in compliance with all terms, conditions and limitations, if any, contained in any letter or ruling issued in conjunction with the grant of its tax-exempt status; the facts and circumstances that form the basis of such letter or ruling as represented to the Internal Revenue Service continue substantially to exist; and the Borrower, so long as the Bonds are outstanding, will continue to be exempt from federal income taxes under Section 501(a) and Section 501(c)(3) of the Code.

(aa) Each of the representations and warranties of the Borrower contained in each other Loan Document is true, correct and materially complete.

## THE BONDS; LOAN; LOAN PAYMENTS

**Agreement to Issue and Purchase Bonds.** Agreement to Issue. In order to provide funds to make the Loan to the Borrower as provided herein, the Issuer agrees that it shall issue and cause to be delivered to the Lender the Bonds in the principal amount of \$4,141,000. The Bonds are issuable only as fully registered bonds in certificated form (not book entry) in minimum denominations of \$100,000 and shall be in the form attached as Exhibit A hereto; the terms therein are hereby incorporated by reference and made a part hereof. The obligations of the Issuer hereunder and under the Bonds constitute special limited obligations of the Issuer payable solely from and secured by the payments derived by the Issuer from the Borrower's repayment of the Loan and any amounts realized by the Lender with respect to the Collateral granted as security for the Loan and the Bonds, including under the Mortgage (collectively, the "Bond Security"). Proceeds of the Bonds shall be used solely to fund the Loan. The Lender shall purchase the Bonds at a price of par and bearing interest at the Interest Rate, and the Issuer shall thereupon fund the Loan as set forth herein and the proceeds of the Bonds shall be applied as set forth herein and in the manner provided in the Tax Agreement.

The Bonds shall bear interest at the Interest Rate. Interest is calculated based on a 360-day year, actual number of days elapsed, subject to adjustment as provided in Section 3.13 hereof. Interest on the Bonds shall accrue from and including the Date of Issuance to the Maturity Date on the outstanding principal amount of the Bonds. Interest and principal shall be

payable in equal monthly installments equal to \$23,500.00 until the Maturity Date. From the Date of Issuance to the First Adjustment Date, such payments shall be applied to interest and principal as described in the amortization schedule attached hereto as Exhibit E. Thereafter, such payments shall be applied to interest and principal as provided in the amortization schedules provided by the Lender (i) on the First Adjustment Date for the period from and including the First Adjustment Date to the Second Adjustment Date and (ii) on the Second Adjustment Date for the period from and including the Second Adjustment Date to the Maturity Date.

The Bonds shall have a final maturity of March 6, 2034 (the "Maturity Date") and all unpaid principal and accrued but unpaid interest and all other amounts payable under the Bonds or hereunder shall be due and payable on the Maturity Date. Notwithstanding the foregoing, the Bonds shall be subject to prepayment at the option of the Borrower as described in Section 3.06 hereof. Principal and interest on the Bonds shall be payable to the Lender by check, draft, bank wire transfer or automatic debit of the Borrower. All payments of principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts. The Bonds shall be executed in the name of the Issuer with the manual signature of the Mayor of the Issuer and shall be attested with the manual signature of the City Clerk of the Issuer.

(b) Purchase of Bonds. On the Date of Issuance, the Issuer shall have duly adopted and there shall be in full force and effect the Resolution and the Lender shall have received the following:

(1) An opinion of nationally-recognized Bond Counsel in form acceptable to the Lender and its counsel and addressed to the Lender and the Issuer and upon which the Lender and the Issuer may rely, to the effect that the interest on the Bonds is exempt from gross income for federal income tax purposes and the Bonds are "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code;

(2) An opinion of counsel to the Borrower, dated the date of the Date of Issuance, and in a form acceptable to the Lender and its counsel and the Issuer and its counsel and addressed to the Lender, the Issuer and Bond Counsel and upon which the Lender, the Issuer and Bond Counsel may rely;

(3) A certified copy of the Resolution of the Issuer authorizing the issuance of the Bonds and sale of the Bonds to the Lender, and the execution, delivery and performance of the documents to which the Issuer is a party;

(4) A duly executed counterpart of this Financing Agreement;

(5) Duly executed counterparts of each of the other Loan Documents;

(6) The original executed Bonds;

(7) Certificates of the Borrower (i) attaching true and correct copies of the Articles of Incorporation and Bylaws of the Borrower, resolutions of the Borrower's Governing Board authorizing the execution, delivery and performance of the appropriate Loan Documents to which the Borrower is a party, and a letter of determination from the Internal Revenue Service confirming that the Borrower is a corporation described in Section 501(c)(3) of the Code and is not a "private foundation" as such term is defined in the Code, (ii) containing incumbency and specimen signatures of officers, and (iii) setting forth such other matters as the Lender or Issuer may require;

(8) Such additional legal opinions, certificates, proceedings, instruments and other documents as counsel for the Lender or Issuer may reasonably request to evidence compliance by the Borrower and the Issuer with the legal requirements, the truth and accuracy, as of the time of the Date of Issuance, of the representations of the Issuer and Borrower herein contained and the due performance or satisfaction by the Borrower and the Issuer, at or prior to the Date of Issuance, of all agreements then required to be performed and all conditions then required to be satisfied by the Borrower and the Issuer at the Date of Issuance;

(9) Copies of the audited financial statements of the Borrower, together with any management letters, certified by independent certified public accountants acceptable to the Lender, for the most recently completed Fiscal Year of the Borrower, together with management prepared interim financial statements for the most recent period available since such date, certified by the chief financial officer of the Borrower;

(10) Uniform Commercial Code searches regarding the Borrower showing only such liens as the Lender shall approve;

(11) A copy of the marked down title commitment relating to the real property described in the Mortgage, which shall be (i) in such form as the Lender shall approve, and (ii) contain only such exceptions or other matters as the Lender may approve;

(12) Evidence that there has been no Material Adverse Effect on the Borrower, its business, operations, properties, assets, financial condition or prospects from the date of the most recent financial statements delivered to the Lender; and

(13) Evidence of the contemporaneous payment in full of the Prior Obligation.

**Loan; Use of Proceeds.** The Issuer hereby agrees, subject to the terms and conditions of this Financing Agreement, to issue the Bonds and to lend the proceeds thereof to the Borrower on the Date of Issuance of the Bonds to provide for the payment in full of the Prior Obligation and the refinancing of the Project. The Borrower hereby accepts the Loan and the terms thereof and agrees to make all Loan payments in connection thereof in accordance with and as provided in Section 3.04 hereof. The terms of the Loan shall be the same as those of the Bonds.

The proceeds of the Bonds shall be applied on the Date of Issuance to repay the Prior Obligation.

**Reserved.**

**Section 1.04. Loan Repayment.**

(a) The Borrower shall pay directly to the Lender, for the account of the Issuer, on or before the dates required under the Bonds and under this Financing Agreement, in immediately available funds, all amounts becoming due and payable pursuant to the Bonds and this Financing Agreement together with all Expenses when due (except Expenses of the Issuer which are payable directly to the Issuer). Accordingly, the Borrower agrees to make all Loan payments directly to the Lender, as assignee of the Issuer, at the times, in the amounts and in the manner as payments are required with respect to the Bonds. The Borrower shall execute a Promissory Note to the Issuer which shall be assigned by the Issuer to the Lender to evidence its payment obligations hereunder. Such Promissory Note shall be substantially in the form attached hereto as Exhibit D.

(b) All payments payable by the Borrower under this Section 3.04, except for Expenses incurred by the Issuer, and payments to satisfy the Issuer's right of indemnification under Article VI hereof, are assigned by the Issuer to the Lender as the initial Owner of the Bonds. The Borrower hereby assents to such assignment.

(c) The Borrower shall pay reasonable expenses, including the reasonable fees and expenses of counsel, of the Issuer and the Lender incurred in connection with the issuance of the Bonds, the administration of the Loan and the Lender's ownership of the Bonds upon written request, such expenses to be paid directly to the requesting party upon receipt of such request (the "Expenses"). The Borrower will also pay the reasonable expenses of the Issuer related to the issuance of the Bonds and any and all reasonable ongoing costs and expenses for any continuing duties or obligations of the Issuer related in any respect to the Bonds, this Financing Agreement, the Indemnity Agreement or any other documents executed in connection therewith after the issuance of the Bonds.

(d) In the event the Borrower should fail to make any of the payments required under the Bonds and this Financing Agreement when due, the amount so in default shall continue as an obligation of the Borrower until fully paid and, until paid, all outstanding Bonds shall bear interest at the Default Rate.

(e) Upon acceleration of the Bonds, the obligation of the Borrower to make payments hereunder shall likewise be deemed to be accelerated.

(f) The payments required to be made by the Borrower hereunder have been calculated to provide funds sufficient to pay the principal of and interest on the Bonds as the same come due and to provide funds for the payment of Expenses and other amounts that may become payable to the Issuer or the Lender with respect to the Bonds and this Financing

Agreement. The Borrower recognizes, understands and acknowledges that it is the intention of the parties that the payments hereunder be available exclusively for such purposes. This Financing Agreement shall be construed to effectuate this intent. The payments to be made by the Borrower hereunder shall be made by the Borrower irrespective of any breach or any failure of compliance by the Issuer or the Lender with any requirement of this Financing Agreement or any counter-claim or right of offset against the Issuer or the Lender that the Borrower might otherwise have. All payments required to be made by the Borrower pursuant to this Financing Agreement shall be promptly made as herein set forth.

(g) The Borrower shall make payments on behalf of the Issuer through the Lender via check, online banking, auto drafting or any other method acceptable to the Lender.

(h) If the day for any payment due under this Financing Agreement or the Bonds is not a Business Day, then such payment may be made on the next succeeding Business Day without additional interest and with the same force and effect as if made on the specified date for payment.

(i) If any payment due to the Lender under this Financing Agreement is more than ten (10) days overdue, a late charge of five percent (5%) of the overdue payment shall be assessed.

(j) No provision, covenant or agreement contained in this Financing Agreement or in the Bonds or any obligation imposed on the Issuer herein or in the Bonds or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability, a charge upon its general credit or a pledge of its taxes or general revenues. The Bonds shall not be or constitute a general obligation or indebtedness of the Issuer as a "Bond" within the meaning of any constitutional or statutory provision, but shall be a special obligation of the Issuer, payable solely from moneys received by or on account of the Issuer from the Borrower pursuant to this Financing Agreement, the Loan Documents or any other security document or instrument delivered by or for the account of the Borrower for the benefit of the holders. Neither the Lender nor any subsequent holder of the Bonds shall ever be entitled to payment of such bond from any moneys of the Issuer, except from the Loan Payments made by the Borrower.

(k) If the Borrower makes a partial payment of any amounts due pursuant to Section 3.04(a) above, such partial payment shall first be applied to interest due hereunder.

**To Whom Payments are Due; Restrictions on Transfers.** Payments due hereunder and under the Bonds, other than indemnification payments or payment of Expenses of the Issuer, shall be made by the Borrower on behalf of the Issuer directly to the Lender as specified in Section 3.04 hereof, or if to a subsequent Owner, at the written direction of such Owner. Payments of the Expenses or costs or indemnification payments shall be made by the Borrower directly to the persons, firms, governmental agencies and other entities, including the Issuer

and the Lender, their counsel and Bond Counsel in accordance with directions of the Issuer and the Lender.

The Bonds shall be subject to transfer by the Lender or future holders as set forth in the form of the Bonds in Exhibit A hereto.

**Prepayment of Bonds.** The Borrower shall have the option, upon not less than thirty (30) days' prior written notice given by the Borrower to the Owner, to prepay the principal of the Bonds, in whole or in part, at any time or times, without prepayment fee or penalty (but with accrued interest on any prepayment amount). No notice shall be required for the payment of principal on the Bonds in accordance with the amortization schedule attached hereto as Exhibit E and the amortization schedules provided pursuant to Section 3.01 hereof.

**Satisfaction of Obligation.** Except as otherwise herein expressly provided, the obligation of the Borrower to make payments hereunder shall be satisfied and terminated upon payment in full of all amounts due hereunder and under the Bonds.

**Issuer's Performance of the Borrower's Obligations.** In the event the Borrower at any time neglects, refuses or fails to perform any of its obligations under this Financing Agreement, the Issuer or the Lender, at their respective options and following at least thirty (30) days' written notice to the Borrower except where a shorter period of notice is necessary to avoid a default in payment on the Bonds or hereunder or to prevent any loss or forfeiture thereof, may, but shall be under no obligation to, perform or cause to be performed such obligations, and all expenditures incurred by the Issuer or the Lender in connection therewith shall be promptly paid or reimbursed by the Borrower to the Issuer or the Lender, as the case may be, and shall bear interest at the Default Rate until so reimbursed.

**Security Interest and Assignment; Acceptance by the Lender.** To secure the prompt payment and performance as and when due by the Issuer of its obligations hereunder, the Issuer hereby assigns to the Lender all rights of the Issuer under the Bonds and this Financing Agreement (except its Reserved Rights). The Borrower acknowledges and agrees to such assignment. The Issuer further agrees that, with respect to the assigned rights of the Issuer under this Financing Agreement, the Lender shall have all of the rights and remedies of a Secured Party under the Florida Uniform Commercial Code. By accepting the assignment, the Lender shall look solely to the assigned rights and its rights under the Loan Documents for repayment of the Bonds.

**Operation and Maintenance of the Project.** For so long as the Bonds are outstanding, the Borrower, as independent contractor and not as agent of the Issuer, agrees to keep and maintain the Project in good condition, repair and working order, except for ordinary wear and tear and obsolescence. Subject to the provisions of the Loan Documents, the Borrower, as independent contractor and not as agent of the Issuer, may remodel, modify or otherwise improve the Project or cause or permit the Project to be remodeled, modified or otherwise

improved, from time to time as the Borrower in its discretion determines to be in its best interests. The Borrower shall operate, repair and maintain the Project as a "project" and an "educational facility," as applicable, as defined in the Act at its own expense.

**No Warranty of Condition or Suitability by Issuer.** THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE PROJECT OR THE CONDITION THEREOF, OR THAT THE PROJECT IS OR WILL BE SUITABLE FOR THE PURPOSES OR NEEDS OF THE BORROWER. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE BORROWER WILL HAVE QUIET AND PEACEFUL POSSESSION OF THE PROJECT. THE ISSUER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR ITS SUITABILITY FOR THE BORROWER'S PURPOSES.

**Certain Matters Regarding Bank Qualification.** The Issuer hereby designates the Bonds as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Borrower represents that neither the Borrower nor any related person, both joint and severally will be the beneficiary of more than \$10,000,000 of "tax-exempt" obligations issued during calendar year 2014.

**Adjustments to Interest Rate.**

(a) Upon the occurrence of a Determination of Taxability and for as long as the Bonds remain outstanding, the Interest Rate on the Bonds shall be adjusted to the Taxable Rate (unless an Event of Default shall have occurred, in which case the Default Rate shall apply). In addition, upon a Determination of Taxability, the Borrower shall pay to the Owner (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Bonds during the Taxable Period and (B) the amount of interest that would have been paid during the Taxable Period had the Bonds borne interest at the Taxable Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Owners as a result of the Determination of Taxability. This adjustment shall survive payment of the Bonds until such time as the federal statute of limitations under which the interest on the Bonds could be declared taxable under the Code shall have expired.

(b) If the Maximum Federal Corporate Tax Rate as applicable to the Lender decreases from thirty-five percent (35%), the Interest Rate otherwise borne by the Bonds shall be increased to the product obtained by multiplying the interest rate otherwise borne by the Bonds by a fraction, the numerator of which is 1 minus the Maximum Federal Corporate Tax Rate as decreased and the denominator of which is .65.

(c) So long as no Determination of Taxability shall have occurred, upon the occurrence of a Loss of BQ Status and for as long as the Bonds remain outstanding, the Interest Rate on the Bonds shall be converted to the Adjusted BQ Rate. In addition, upon a Loss of BQ

Status, the Borrower shall pay to the Owners (i) an additional amount equal to the difference between (A) the amount of interest actually paid on the Bonds during the period of time from the date of issuance of the Bonds and the next succeeding interest payment date, and (B) the amount of interest that would have been paid during the period in clause (A) had the Bonds borne interest at the Adjusted BQ Rate, and (ii) an amount equal to any interest, penalties on overdue interest and additions to tax (as referred to in Subchapter A of Chapter 68 of the Code) owed by the Owners as a result of the Loss of BQ Status.

(d) If any change in any law or regulation or in the interpretation thereof by any court or administrative or Governmental Authority charged with the administration thereof shall either (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against the Bonds owned by the Lender or (ii) impose on the Lender any other condition relating, directly or indirectly, to this Financing Agreement or any of the other Loan Documents, and the result of any event referred to in the preceding clause (i) or (ii) shall be to increase the cost to the Lender of owning the Bonds, then, upon written demand by the Lender, the Borrower hereby agrees to pay promptly to the Lender, from time to time as specified by the Lender, such additional amounts as shall be sufficient to compensate the Lender for such increased cost. A certificate of the Lender claiming compensation under this subsection and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive absent manifest error. In determining any such amount, the Lender may use any reasonable averaging and attribution methods. Notwithstanding the foregoing, however, the provisions of this Section 3.13(d) shall not become effective at any time other than during a Taxable Period unless the Lender shall have obtained a Favorable Tax Opinion.

(e) If, after the date of this Financing Agreement, the Lender shall have reasonably determined that the adoption or implementation of any applicable law, rule or regulation regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender with any request or directive regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the Lender's capital, on the Bonds or otherwise, as a consequence of its ownership of the Bonds to a level below that which the Lender could have achieved but for such adoption, change or compliance (taking into consideration the Lender's policies with respect to capital adequacy) by an amount deemed by the Lender to be material, then from time to time, promptly upon demand by the Lender, the Borrower hereby agrees to pay the Lender such additional amount or amounts as will compensate the Lender for such reduction. A certificate of the Lender claiming compensation under this subsection and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive absent manifest error. In determining any such amount, the Lender may use any reasonable averaging and attribution methods. Notwithstanding the foregoing, however, the provisions of this Section 3.13(e) shall not become effective at any time other than a Taxable Period unless the Lender shall have obtained a Favorable Tax Opinion.



(f) Upon any Event of Default under Section 8.01 hereof, the Interest Rate shall be increased to the Default Rate effective as of the date of such Event of Default.

(g) The Lender shall notify the Issuer and the Borrower in writing of any adjustments pursuant to this Section 3.13. Notwithstanding any provision of this Section 3.13 to the contrary, in no event shall the Interest Rate on the Bonds or the Loan exceed the maximum rate permitted by law.

(i) The provisions set forth in Section 3.1(a), (b) and (c) shall survive payment of the Bonds and the Loan until such time as the federal statute of limitations under which the interest on the Bonds and the Loan could be declared taxable under the Code shall have expired.

## COVENANTS

The Borrower covenants and agrees that so long as any amounts are owed under the Bonds or hereunder:

**Notices of Material Events.** The Borrower will furnish to the Issuer and the Lender prompt written notice of the following:

(a) the occurrence of any Default or Event of Default, or the receipt by the Borrower of any written notice of an alleged Default or Event of Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or, to the knowledge of the Borrower, affecting the Borrower which, if adversely determined, could reasonably be expected to result in a Material Adverse Effect; and

(c) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a written statement of an Authorized Representative setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**Existence; Conduct of Business.** The Borrower will do or cause to be done all things necessary to preserve, renew and maintain in full force and effect its legal existence and its respective rights, licenses, permits, privileges, franchises, patents, copyrights, trademarks and trade names material to the conduct of its business and will continue to engage in the same business as presently conducted or such other businesses that are reasonably related thereto; provided, that nothing in this Section shall prohibit any merger, consolidation, liquidation or dissolution permitted under Section 5.02 hereof.

**Compliance with Laws, Etc.** The Borrower will comply in all material respects with all laws, rules, regulations and requirements of any Governmental Authority applicable to its business and properties, except where the failure to do so, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

**Books and Records; Financial Information; Financial Statements.** The Borrower will keep proper books of record and account in which full, true and correct entries shall be made of all dealings and transactions in relation to business and activities to the extent necessary to prepare the financial statements of the Borrower in conformity with GAAP. Not later than 180 days after the close of each fiscal year of the Borrower, the Borrower shall provide to the Lender its audited financial statements for such fiscal year, prepared in accordance with applicable law and generally accepted accounting principles and audited by an independent certified public accountant. In addition, the Borrower shall submit to Lender the annual budget of the Borrower for each fiscal year within 30 days following the adoption thereof.

**Visitation, Inspection, Etc.** The Borrower will permit representatives of the Lender or Issuer to visit and inspect its properties, to examine its books and records and to make copies and take extracts therefrom, and to discuss its affairs, finances and accounts with any of its officers and with its independent certified public accountants, all at such reasonable times and as often as the Lender or Issuer may reasonably request after reasonable prior notice to the Borrower.

**Maintenance of Properties; Insurance.** The Borrower will (a) keep and maintain all property material to the conduct of its business, including, without limitation, the Facilities, in good working order and condition, ordinary wear and tear excepted, and (b) maintain with financially sound and reputable insurance companies, insurance with respect to its properties and business, and the properties and business of its Subsidiaries, if any, against loss or damage of the kinds customarily insured against by companies in the same or similar businesses operating in the same or similar locations.

## **REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE LENDER**

The Lender represents, warrants and covenants for the benefit of the Borrower and the Issuer, as follows:

(a) The Lender is a Florida banking corporation duly organized, validly existing and in good standing under the laws of the State, has power to enter into this Financing Agreement and to purchase the Bonds, and by proper corporate action has duly authorized the execution and delivery of this Financing Agreement and the Loan Documents which it is required to execute and deliver (the "Lender Documents"). The Lender is in good standing and is duly licensed or qualified to transact banking business in the State.

(b) The Lender has been fully authorized to execute and deliver the Lender Documents and to perform the transactions contemplated thereby by appropriate official approval, and further represents, covenants and warrants that all requirements have been met, and procedures have occurred in order to ensure the enforceability of the Lender Documents against the Lender, and the Lender Documents have been duly authorized, executed and delivered by the Lender.

(c) The officer(s) of the Lender executing the Lender Documents and any related documents are duly authorized to execute and deliver the Lender Documents and such related documents.

(d) The Lender Documents constitute valid and legally binding obligations of the Lender, enforceable against the Lender in accordance with their respective terms, except to the extent limited by bankruptcy, reorganization or other laws of general application relating to or affecting the enforcement of creditors' rights and the application of general principles of equity (regardless whether such enforceability is considered in a proceeding at law or in equity).

(e) The execution and delivery of the Lender Documents, the consummation of the transactions contemplated hereby and the fulfillment of the terms and conditions hereof do not and will not violate any law, rule, regulation or order, conflict with or result in a breach of any of the terms or conditions of the articles of incorporation or bylaws of the Lender or of any corporate restriction or of any agreement or instrument to which the Lender is now a party and do not and will not constitute a default under any of the foregoing or result in the creation or imposition of any liens, charges or encumbrances of any nature upon any of the property or assets of the Lender contrary to the terms of any instrument or agreement.

(f) The authorization, execution, delivery and performance of the Lender Documents by the Lender do not require submission to, approval of, or other action by any governmental authority or agency, which action with respect to the Lender Documents has not been taken and which is final and nonappealable.

(g) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the Lender's knowledge, overtly threatened against or affecting the Lender, challenging the Lender's authority to purchase the Bonds, enter into the Lender Documents or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of the Lender Documents or any other transaction of the Lender which is similar hereto, or would materially and adversely affect any of the transactions contemplated by the Lender Documents.

## THE BORROWER'S INDEMNIFICATION OF ISSUER AND LENDER

### **Indemnification of Issuer and Lender; No Issuer or Lender Liability; Damage Claims.**

The Borrower shall protect, indemnify and save harmless the Issuer and the Lender and their officers, officials, members, directors, employees, agents and attorneys against and from any and all liabilities, suits, actions, claims, demands, damages, losses, expenses, including attorneys fees, and costs of every kind and nature incurred by, or asserted or imposed against, the Issuer or the Lender, and their officers, officials, members, directors, agents, employees or attorneys, or any of them, by reason of any accident, injury (including death) or damage to any person or property, however caused, resulting from, connected with or growing out of any act of commission or omission of the Borrower, or any officers, members, directors, employees, agents, assignees, contractors or subcontractors of the Borrower, or any use, non-use, possession, occupation, condition, operation, service, design, construction, acquisition, maintenance or management of, or on, or in connection with, the Project or the Facilities or any other property of the Borrower, or any part thereof, or otherwise related to this Financing Agreement, the issuance of the Bonds or any related documents or the refinancing of the Project during the Term of this Financing Agreement or after the expiration of such Term, and regardless of whether such liabilities, suits, actions, claims, demands, damages, losses, expenses and costs be against or be suffered or sustained by the Issuer or the Lender or any of their officers, officials, members, directors, agents, employees or attorneys, or be against or be suffered or sustained by other persons, corporations or other legal entities to whom the Issuer or the Lender or any of their officers, officials, members, directors, agents, employees or attorneys may become liable. Neither the Issuer nor the Lender nor any of their officers, officials, members, directors, employees, agents and attorneys shall be liable for any damage or injury occurring to the persons or property of the Borrower or any of its officers, members, agents, including operating personnel, contractors and employees, or any other person or entity who or which may be upon the Facilities, due to any act or negligence of any person or entity other than the willful malfeasance or gross negligence of the Issuer or the Lender, their officers, officials, members, directors, agents, servants, employees and attorneys. The Borrower may, and if so requested by the Issuer or the Lender shall, utilizing counsel reasonably acceptable to the Issuer and the Lender, undertake to defend, at its sole cost and expense, any and all suits, actions or proceedings brought against the Issuer and the Lender or any of their officers, officials, members, directors, agents, employees or attorneys in connection with any of the matters mentioned in this Section.

A party seeking indemnification under this Article VI shall notify the Borrower in writing promptly of any claim or action brought against such party in which indemnity may be sought against the Borrower under this Article; and such notice shall be given in sufficient time to allow the Borrower to defend such claim or action. However, the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Borrower under this Article VI, if (i) the party seeking indemnification shall not have had knowledge or notice of such claim or action, or (ii) the Borrower's ability to defend such claim or action shall not thereby be materially impaired. In the event, however, that (x) the party

seeking indemnification shall not have notified the Borrower promptly of any such claim or action after such party's receipt of notice thereof, and (y) the Borrower's ability to defend or participate in such claim or action is materially impaired by reason of not having received timely notice thereof from the party seeking indemnity, then the Borrower's obligation to so defend and indemnify shall be qualified to the extent (and only to the extent) of such material impairment.

The provisions of this Article VI shall expressly survive the termination of this Financing Agreement.

The Issuer and the Lender agree, at the request and expense of the Borrower, to cooperate in the making of any investigation and defense of any such claim and promptly to assert any or all of the rights and privileges and defenses, which may be available to the Issuer and the Lender.

To the extent any provisions of this Article VI conflict with any of the provisions of the Indemnification Agreement, the provisions of the Indemnification Agreement shall prevail.

## TERM AND TERMINATION

**Term.** The term of this Financing Agreement shall commence on the date and at the time when the Bonds are delivered, and terminate on the date when the Bonds and all other obligations of the Borrower or the Issuer under the Bonds and this Financing Agreement (other than the indemnity obligations under Article VI hereof) shall have been paid in full under such circumstances that no claim for repayment may be made under any law or rule of law (the "Term").

**Termination.** In no event shall this Financing Agreement terminate until the Lender certifies to the Issuer (with a copy of such certification to the Borrower) that the Bonds, including principal, interest and any redemption premium, and all other obligations incurred by the Borrower and the Issuer, as the case may be, under the Bonds and this Financing Agreement have been paid in full.

## EVENTS OF DEFAULT AND REMEDIES

**Events of Default.** Upon the occurrence of any of the following events (herein referred to as an "Event of Default"), unless waived by the Owners:

- (a) the occurrence of an "Event of Default" as described and defined in any of the Loan Documents; or

(b) failure of the Borrower to pay any amount when due under the Bonds or under this Financing Agreement or any other Loan Document; or

(c) any representation or warranty made by or on behalf of the Borrower in or in connection with this Financing Agreement or any other Loan Document (including any Annexes or Exhibits attached hereto or thereto) or any amendments or modifications hereof or waivers hereunder, or in any certificate, report, financial statement or other document submitted to the Lender by the Borrower pursuant to or in connection with this Financing Agreement or any other Loan Document shall prove to be materially incorrect when made or submitted; or

(d) the Borrower shall fail to observe or perform any covenant or agreement contained in Section 4.02 (with respect to its existence) or Article VI hereof; or

(e) the Borrower shall fail to observe or perform any covenant or agreement contained in this Financing Agreement (other than those referred to in clauses (b), (c) and (d) above), and such failure shall remain unremedied for 30 days after the earlier of (i) any officer of the Borrower becomes aware of such failure, or (ii) notice thereof shall have been given to the Borrower by the Lender; or

(f) a default or event of default shall occur under any Loan Document; or

(g) the Borrower or any of its Subsidiaries shall default under any current or future indebtedness to the Lender or its Affiliates; or

(h) the Borrower (whether as primary obligor or as guarantor or other surety) shall fail to pay any principal of or premium or interest on any material indebtedness that is outstanding, when and as the same shall become due and payable (whether at scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument evidencing such material indebtedness; or any other event shall occur or condition shall exist under any agreement or instrument relating to such material indebtedness and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or permit the acceleration of, the maturity of such indebtedness; or any such indebtedness shall be declared to be due and payable; or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or any offer to prepay, redeem, purchase or defease such indebtedness shall be required to be made, in each case prior to the stated maturity thereof; or

(i) the Borrower shall (i) commence a voluntary case or other proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar

official of it or any substantial part of its property, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (i) of this Section, (iii) apply for or consent to the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors, or (vi) take any action for the purpose of effecting any of the foregoing; or

(j) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or its debts, or any substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect or (ii) the appointment of a custodian, trustee, receiver, liquidator or other similar official for the Borrower or for a substantial part of its assets, and in any such case, such proceeding or petition shall remain undismissed for a period of 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(k) the Borrower shall become unable to pay, shall admit in writing its inability to pay, or shall fail to pay, its debts as they become due;

then, and in any such event, the Lender may, in its sole discretion, but shall not be obligated to, (i) by notice to the Borrower and the Issuer, declare all amounts payable by the Borrower hereunder to be forthwith due and payable, and the same shall thereupon become due and payable without demand, presentment, protest or further notice of any kind, all of which are hereby expressly waived, and/or (ii) exercise all of its rights and remedies hereunder and under the Loan Documents and/or (iii) accelerate payment of the Bonds and interest accrued thereon.

No remedy herein conferred or reserved is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Financing Agreement or any other Loan Document or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to exercise any remedy reserved to the Lender in this Financing Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Financing Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Financing Agreement shall be established by conduct, custom or course of dealing, but solely by an instrument in writing duly executed by the parties thereunto duly authorized by this Financing Agreement.

The Borrower expressly agrees that any Event of Default hereunder shall also constitute a default or event of default under each of the Loan Documents.

**Notice of Defaults.** The Borrower shall within five (5) days after it acquires knowledge thereof, notify the Lender in writing at its notice address provided herein (a) of any change in any material fact or circumstance represented or warranted by the Borrower in this Agreement or in connection with the issuance of the Bonds; (b) upon the happening, occurrence, or existence of any Event of Default, and (c) any event or condition which with the passage of time or giving of notice, or both, would constitute an Event of Default, and shall provide the Lender, with such written notice, a detailed statement by a responsible officer of the Borrower of all relevant facts and the action being taken or proposed to be taken by the Borrower with respect thereto. Regardless of the date of receipt of such notice by the Lender, such date shall not in any way modify the date of occurrence of the actual Event of Default.

**Waivers by Lender.** The Lender may waive compliance with any provision contained in this Financing Agreement or the Bonds without the consent of the Issuer so long as (i) the waiver will not affect the provisions of Section 6.01 hereof relating to the indemnification of the Issuer by the Borrower or any other provision hereof relating to the Issuer's rights, fees, expenses, notices or transfer provisions, (ii) the Borrower delivers to the Lender an Opinion of Counsel to the effect that such waiver will not adversely affect the qualification of the Bonds or the Project under the Act, and (iii) the Borrower delivers to the Lender a Favorable Tax Opinion.

## MISCELLANEOUS

**Issuer and the Lender Officers Not Liable.** The Mayor, the City Commissioners, officers, officials, directors, agents, members, employees and attorneys of the Issuer and the Lender shall not be personally liable for any costs, losses, damages or liabilities caused or subsequently incurred by the Borrower or any officer, member, director, agent or attorney thereof in connection with or as a result of this Financing Agreement.

**Enforcement.** The rights, interests, powers, privileges and benefits accruing to or vested in the Issuer and the Lender under this Financing Agreement may be protected and enforced in conformity with the terms of this Financing Agreement or the Bonds in the sole discretion of the Issuer or the Lender, as the case may be.

**Survival of Representations and Warranties.** All representations and warranties contained herein or made in writing by the Borrower in connection herewith shall survive the execution and delivery of this Financing Agreement, regardless of any investigation made by the Lender or on its behalf.

**Expenses.** The Borrower hereby agrees to pay promptly all costs and expenses in connection with the preparation, issuance, delivery, filing (if any), recording (if any) and administration of this Financing Agreement, including, without limitation, the fees and



expenses of counsel for the Lender, the other Loan Documents, the Bonds and any other documents which may be delivered in connection with this Financing Agreement and all costs and expenses (including reasonable counsel fees and expenses) in connection with (a) any and all amounts which the Lender has paid relative to the Lender's curing of any Event of Default resulting from the acts or omissions of the Borrower under this Financing Agreement, any other Loan Document or the Bonds or (b) the enforcement of this Financing Agreement or any other Loan Document. In addition, the Borrower hereby agrees to pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the execution and delivery, filing (if any), and recording (if any) of this Financing Agreement, any other Loan Document or the Bonds, or any other documents which may be delivered in connection with this Financing Agreement, and agrees to save the Lender and Issuer harmless from and against any and all liabilities with respect to or resulting from any delay in paying or omission to pay such taxes and fees. Notwithstanding the foregoing, no payment shall be required under this Section 9.04 in respect of any cost or expense the Lender has incurred because of its gross negligence or willful misconduct.

**Amendment of Agreement.** This Financing Agreement may be amended only by a written instrument signed by the Issuer, the Borrower and the Lender; provided, however, that nothing herein shall permit or be construed as permitting any abatement, reduction, abrogation, waiver or diminution in any manner or to any extent whatsoever of the obligation of the Borrower to pay the loan payments as provided in this Financing Agreement.

**Prepayment or Acceleration of Bonds.** The Issuer, at the request at any time of the Borrower or the Lender, shall take all steps that may be proper and necessary under the applicable provisions of this Financing Agreement to effect the prepayment or acceleration of all or part of the then outstanding Bonds as may be specified by the Borrower or the Lender, on the earliest date on which such action may be effected. Expenses of such action shall be paid by the Borrower and not from other funds of the Issuer. The Issuer shall, at the expense of the Borrower, cooperate with the Borrower in effecting any prepayment or mandatory purchase or acceleration of the Bonds.

**Registration, Transfer and Exchange.** The Issuer shall cause books for the registration of the Bonds and for the registration of transfer of the Bonds as provided in this Financing Agreement to be kept by the Lender which is hereby appointed the Issuer's bond registrar and agent for the transfer and exchange of the Bonds (the "Registrar") and as such shall maintain the books of the Issuer for the registration of ownership of each Bond as provided herein. The Lender, for and on behalf of the Issuer, shall keep the Bond's registration record, in which shall be recorded any and all transfers of ownership of the Bonds. The Bonds shall not be registered to bearer. The Bonds may be transferred upon the registration books upon surrender thereof by the registered Owner in person or by such Owner's attorney-in-fact or legal representative duly authorized in writing together with a written instrument of transfer, and in accordance with the requirements of this Section.

The Issuer and the Registrar may deem and treat the registered Owner of the Bonds as the absolute Owner of the Bonds for the purpose of receiving any payment on the Bonds and for all other purposes of this Agreement, whether the Bonds shall be overdue or not. Payment of, or on account of, the principal of and interest on the Bonds shall be made to or upon the written order of such registered Owner or such Owner's attorney-in-fact or legal representative duly authorized in writing. All such payments shall be valid and effectual to satisfy and discharge the liability upon the Bonds to the extent of the sum or sums so paid.

The Lender will not transfer the Bonds except in accordance with the restrictions contained therein and unless it also transfers the Bond Security (as defined in Section 3.01 hereof).

**Surplus Funds.** When the Bonds have been paid and all other obligations incurred or to be incurred by the Borrower under the Bonds and this Financing Agreement shall have been paid, and, assuming the existence of no other agreements imposing a continuing lien on the surplus funds if any, held by the Issuer or the Lender, any surplus funds derived from amounts provided by the Borrower under this Financing Agreement or any other Loan Document and remaining in the possession of the Issuer or the Lender but not due and owing to the Issuer or the Lender shall be paid to the Borrower.

**[Reserved].**

**Notices; Demands; Requests.** All notices, demands and requests to be given to or made hereunder by the Borrower, the Issuer or the Lender shall be in writing and shall be deemed to be properly given or made if sent by telephonically confirmed facsimile transmission, electronically confirmed email or by United States registered or certified mail, postage prepaid, addressed as follows:

(a) As to the Borrower:

Lake Wales Charter Schools, Inc.  
130 East Central Avenue  
Lake Wales, FL 33853

(b) As to the Issuer:

City of Lake Wales, Florida  
201 West Central Avenue  
Lake Wales, FL 33853

(c) As to the Lender:

Citizens Bank & Trust  
P.O. Box 3400  
Lake Wales, FL 33859

Receipt of notices, demands, requests, or other communications hereunder shall occur upon actual delivery (whether by facsimile transmission, electronic mail, mail, messenger, courier service, or otherwise), to an officer, agent, or employee of such other party at the address of such party set forth above, subject to change as provided herein below. An attempted delivery in accordance with the foregoing, acceptance of which is refused or rejected, shall be deemed to be and shall constitute receipt; and an attempted delivery in accordance with the foregoing by facsimile transmission, email, mail, messenger, or courier service (whichever is chosen by the sender) which is not completed because of changed address of which no notice was received by the sender in accordance with this provision prior to the sending of the notice, certificate, or other communication shall also be deemed to be and constitute receipt.

Any of such addressees and addresses may be changed at any time upon written notice of such change sent by certified mail, postage prepaid, to the other parties by the party effecting the change. A copy of any notice sent by one of the foregoing parties to another, shall be sent to the third such party

**Satisfaction Requirement.** If any agreement, certificate or other writing, or any action taken or to be taken, is by the terms of this Financing Agreement required to be satisfactory to the Lender, the determination of such satisfaction shall be made by the Lender in its sole and exclusive judgment exercised in good faith.

**Applicable Law and Venue.** The Bonds shall be governed by applicable federal law and the internal laws of the State of Florida. The Borrower agrees that certain material events and occurrences relating to the Bonds bear a reasonable relationship to the laws of Florida and the validity, terms, performance and enforcement of the Bonds shall be governed by the internal laws of Florida which are applicable to agreements which are negotiated, executed, delivered and performed solely in Florida. Unless applicable law provides otherwise, in the event of any legal proceeding arising out of or related to the Bonds, Borrower consents to the jurisdiction and venue of any court located in the State of Florida.

**Consents and Approvals.** Whenever the written consent or approval of the Issuer or the Borrower or any officer thereof shall be required under the provisions of this Financing Agreement, such consent or approval shall not be unreasonably withheld.

**Multiple Counterparts.** This Financing Agreement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original constituting but one and the same instrument.

**Severability.** If any one or more of the covenants, agreements or provisions of this Financing Agreement shall be determined by a court of competent jurisdiction to be invalid, the invalidity of such covenants, agreements and provisions shall in no way affect the validity or effectiveness of the remainder of this Financing Agreement, and this Financing Agreement shall continue in force to the fullest extent permitted by law.

**The Borrower's Remedies.** In the event the Issuer should fail to perform any of its obligations under this Financing Agreement, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel performance, subject to the limitations contained in Section 9.18 hereof. The Borrower also may, at its own cost and expense and in its own name or in the name of the Issuer, prosecute or defend any action or proceeding or take any other action involving third persons that the Borrower deems reasonably necessary in order to secure or protect its right of possession, occupancy and use of the Project, and in such event the Issuer hereby agrees to cooperate with the Borrower and to take all action necessary to effect the substitution of the Borrower for the Issuer in any such action or proceeding if the Borrower shall so request.

**Extent of Covenants.** All covenants, stipulations, obligations and agreements of the Issuer, the Borrower and the Lender contained in this Financing Agreement shall be effective to the extent authorized and permitted by Applicable Law.

**Limitation on Issuer's Liability.** All obligations of the Issuer expressed or implied in this Financing Agreement or otherwise incurred in connection with the issuance of the Bonds for damages resulting from the breach of any covenant, undertaking, agreement, or warranty shall not be a general debt on its part but shall be payable solely from revenues of the Issuer derived and to be derived under this Financing Agreement and the Bonds. Neither the Mayor, the City Commissioners or other officers nor any official, member, employee, agent or attorney of the Issuer shall be personally liable for the payment of any sum or for the performance of any obligation under this Financing Agreement.

NEITHER THE ISSUER, THE STATE, NOR ANY OTHER POLITICAL SUBDIVISION THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR PURCHASE PRICE OF OR PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE LOAN PAYMENTS AND OTHER REVENUES PLEDGED THEREFOR. NEITHER SHALL THE BONDS NOR THE INTEREST THEREON BE A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR ANY AGENCY THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OR INTEREST ON THE BONDS. THE BONDS SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR ANY AGENCY THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION AND DOES NOT AND SHALL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION OR ANY AGENCY THEREOF. THE LIABILITY OF THE ISSUER UNDER THIS FINANCING AGREEMENT AND THE BONDS, OR ANY PROVISION OR CONDITION HEREOF OR THEREOF, OR OF ANY AGREEMENT IN THIS FINANCING AGREEMENT OR IN THE BONDS CONTAINED, OR OF ANY WARRANTY HEREIN OR IN THE BONDS INCLUDED, OR FOR ANY BREACH OF DEFAULT BY THE ISSUER OF ANY OF THE FOREGOING, SHALL BE LIMITED SOLELY AND EXCLUSIVELY TO THE LOAN PAYMENTS AND OTHER REVENUES AND COLLATERAL PLEDGED THEREFOR. THE

ISSUER SHALL NOT BE REQUIRED TO EXECUTE OR PERFORM ANY OF ITS DUTIES, OBLIGATIONS, POWERS, OR COVENANTS UNDER THIS FINANCING AGREEMENT OR UNDER THE BONDS EXCEPT TO THE EXTENT THE LOAN PAYMENTS AND OTHER REVENUES AND COLLATERAL PLEDGED THEREFOR ARE AVAILABLE THEREFOR. NO PRESENT OR FUTURE DIRECTOR, OFFICER, MEMBER, COMMISSIONER, EMPLOYEE OR AGENT OF THE ISSUER SHALL BE PERSONALLY LIABLE BY REASON OF THE ISSUANCE OF THE BONDS OR THE EXECUTION OF THIS FINANCING AGREEMENT, AND NO COVENANT, AGREEMENT OR OBLIGATION CONTAINED IN THE BONDS OR IN THIS FINANCING AGREEMENT SHALL BE DEEMED TO BE A COVENANT, AGREEMENT OR OBLIGATION OF ANY PRESENT OR FUTURE DIRECTOR, OFFICER, MEMBER, COMMISSIONER, EMPLOYEE OR AGENT OF THE ISSUER IN HIS OR HER INDIVIDUAL CAPACITY.

**Notwithstanding anything else in the Bonds or in this Financing Agreement, upon no contingency nor event whatsoever shall any amounts paid or agreed to be paid to the Issuer or the Lender for use, forbearance or detention of the money to be advanced thereunder exceed the highest lawful rate of interest permitted under law applicable thereto by a court of competent jurisdiction.** If, from any circumstances whatever, fulfillment of any provision of the Bonds or this Financing Agreement, at the time performance of such provisions shall be due, shall involve payment of interest at a rate that exceeds the highest lawful rate as so determined, then ipso facto the obligation to be fulfilled shall be reduced to such highest lawful rate, provided that the interest rate shall remain at such highest lawful rate until such time as the amount of interest paid on the Bonds or under this Financing Agreement shall equal the amount of interest that would otherwise have been paid hereunder. If from any circumstances whatever, the Lender or the Issuer shall ever receive interest, the amount of which would exceed such highest lawful rate, the portion thereof which would be excessive interest shall be applied to the reduction of the unpaid principal balance due under the Bonds or this Financing Agreement and not to the payment of interest, or if the Bonds is no longer outstanding and all sums due under this Financing Agreement and the Bonds has been paid in full, shall be repaid to the Borrower.

**Waiver of Jury Trial.** The Borrower hereby knowingly, voluntarily and intentionally waives the right it may have to a trial by jury with respect to any litigation or legal proceeding based upon this Financing Agreement or the Bonds or arising out of, under or in connection with this Financing Agreement or the Bonds and any agreement contemplated to be executed in conjunction herewith, including any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. This provision is a material inducement for the Lender entering into this Financing Agreement and for the purchase by the Lender of the Bonds. By purchase of the Bonds, the Lender, for itself and its assigns, waives its right to trial by jury to the same extent as the Borrower.

**Limitation on Liability; Waiver of Punitive Damages.** THE LENDER AND THE BORROWER AGREE THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN THEM (A "DISPUTE") THAT

MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS FINANCING AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN THEM OR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. THE LENDER AND THE BORROWER HEREBY EXPRESSLY WAIVE ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY DISPUTE, WHETHER THE DISPUTE IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. THE PROVISIONS OF THIS SECTION 9.20 SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS FINANCING AGREEMENT WITH RESPECT TO ANY AMOUNTS DUE WITH RESPECT TO ANY ACT OR FAILURE TO ACT BY THE BORROWER PRIOR TO SUCH TERMINATION.

**Anti-Terrorism Laws.**

(a) Borrower hereby represents that neither Borrower nor any Affiliate of Borrower is in violation of any statute, treaty, law (including common law), ordinance, regulation, rule, order, opinion, release, injunction, writ, decree or award of any Governmental Authority relating to terrorism or money laundering (collectively, an "Anti-Terrorism Law"), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced and as may be in effect from time to time ("Executive Order No. 13224") and the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "USA Patriot Act") or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(b) Borrower hereby represents that neither Borrower nor any Affiliate of Borrower, or to Borrower's knowledge, any of its respective agents acting or benefiting in any capacity in connection with the loans or other transactions hereunder, is any of the following (each a "Blocked Person"):

a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224;

a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224;

a Person with which Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224;

a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or

a Person who is affiliated with a Person listed above.

(c) Lender hereby notifies Borrower that pursuant to the requirements of the USA Patriot Act, Lender is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow Lender to identify Borrower in accordance with the USA Patriot Act.

**Set off.** The Borrower agrees that, in addition to (and without limitation of) any right of setoff, bankers' lien or counterclaim Lender may otherwise have, Lender shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by it for the account of Borrower maintained by Borrower at any of Lender's offices or at the office of any Affiliate of Lender against any amount payable by Borrower to Lender hereunder or under any other Loan Document which is not paid when due (regardless of whether such balances are then due to Borrower), in which case it shall promptly notify Borrower thereof, provided that Lender's failure to give such notice shall not affect the validity thereof. Payments by Borrower hereunder or under the other Loan Documents shall be made without setoff or counterclaim.

**Certain Waivers.** Except as expressly provided for in the Loan Documents, Borrower hereby irrevocably and unconditionally waives (i) promptness and diligence; (ii) notice of any actions taken by Lender hereunder or under any other Loan Document or any other agreement or instrument relating thereto except to the extent otherwise provided herein, (iii) notice of dishonor and all other notices, demands, presentment for payment and protests, and all other formalities of every kind in connection with the enforcement of Borrower's obligations hereunder and under the other Loan Documents, the omission of or delay in which, but for the provisions of this Section, might constitute grounds for relieving Borrower of any of its obligations hereunder or under the other Loan Documents, (iv) any requirement that Lender protect, secure, perfect or insure any lien on any collateral for the Loan or exhaust any right or take any action against Borrower, or any other person or entity or against any collateral for the Loan, (v) any right or claim of right to cause a marshalling of Borrower assets and (vi) all rights of subrogation or contribution, whether arising by contract or operation of law or otherwise by reason of payment by Borrower pursuant hereto or to the other Loan Documents.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, City of Lake Wales, Florida, has caused this Financing Agreement to be executed in its name and on its behalf by its duly authorized officers; Lake Wales Charter Schools, Inc. has caused this Financing Agreement to be executed in its name and on its behalf by its duly authorized officers; and Citizens Bank & Trust has caused this Financing Agreement to be executed in its name and on its behalf by its duly authorized officer, all as of the day and year first above written.

**CITY OF LAKE WALES, FLORIDA**

(SEAL)

By: \_\_\_\_\_

Title: Mayor

Attest:

By: \_\_\_\_\_

Title: City Clerk

**LAKE WALES CHARTER SCHOOLS,  
INC.**

(SEAL)

By: \_\_\_\_\_

Title:

Attest:

By: \_\_\_\_\_

Title:

**CITIZENS BANK & TRUST**

By: \_\_\_\_\_

Vice President

[Signature Page | Financing Agreement]



**ASSIGNMENT TO CITIZENS BANK & TRUST**

The undersigned hereby irrevocably sells, assigns and transfers unto CITIZENS BANK & TRUST, (the "Lender") without recourse or warranty, certain rights and interests (except its Reserved Rights) under the Financing Agreement dated March 6, 2014 among the City of Lake Wales, Florida, the Lake Wales Charter Schools, Inc. the Lender.

**CITY OF LAKE WALES, FLORIDA**

(SEAL)

By: \_\_\_\_\_

Title: Mayor

Attest:

By: \_\_\_\_\_

Title: City Clerk

[Signature Page | Financing Agreement]

**EXHIBIT A**  
**FORM OF BOND**

## **EXHIBIT B**

### **PROJECT DESCRIPTION**

Acquisition, renovation, addition and equipping of improvements of approximately 10 acres of land together with four existing buildings totaling approximately 40,910 square feet and containing 23 classrooms, a cafeteria, a kitchen, an auditorium, a library/media center, administrative offices, and athletic facilities and equipping capital improvements to the Edward W. Bok Academy. The Project is at 13901 Highway 27, Lake Wales, Florida 33859, and is owned and operated by the Borrower.

**EXHIBIT C**

**FORM OF LENDER'S CERTIFICATE**

**EXHIBIT D**  
**FORM OF PROMISSORY NOTE**

**EXHIBIT E**  
**AMORTIZATION SCHEDULE**

## INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

This INDEMNIFICATION AND HOLD HARMLESS AGREEMENT (this "Agreement") dated as of this 6<sup>th</sup> day of March, 2014, between LAKE WALES CHARTER SCHOOLS, INC., a Florida not-for-profit corporation (the "Borrower") and the CITY OF LAKE WALES, FLORIDA (the "City").

WHEREAS, the City has been requested by the Borrower to approve the issuance of Industrial Development Revenue Bonds (Edward W. Bok Academy Project), Series 2014 (the "Bonds") and loan the proceeds thereof to the Borrower to refinance the outstanding portion of a mortgage loan dated June 24, 2008, by and between the Borrower and Bank of the Ozarks, the proceeds of which were used to finance the acquisition, renovation, addition and equipping of improvements of approximately 10 acres of land together with four existing buildings totaling approximately 40,910 square feet and containing 23 classrooms, a cafeteria, a kitchen, an auditorium, a library/media center, administrative offices, and athletic facilities located at 13901 Highway 27, Lake Wales, Florida 33859, and such other improvements, acquisitions, additions and renovations at the Edward W. Bok Academy pursuant to the terms of a Financing Agreement (the "Financing Agreement") to be entered into among the Borrower, the City and Citizens Bank & Trust (the "Bank"), and the Bank is purchasing the Bonds; and

WHEREAS, as a condition to its approval of the issuance of the Bonds and its execution of the Financing Agreement and the issuance of the Bonds, the City is requiring that the Borrower enter into this Agreement;

NOW, THEREFORE, in consideration of the premises hereof, the issuance by the City of the Bonds and the lending to the Borrower of the proceeds thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Definitions. All terms used herein in capitalized form and not otherwise defined herein shall have the meanings ascribed thereto in the Financing Agreement or the Resolution being adopted by the City Commission of the City on the date hereof.

SECTION 2. Indemnity. The Borrower hereby agrees to indemnify and hold the City and its officers, agents, elected officials, attorneys and employees (collectively, the "Indemnified Parties") harmless against and from any and all claims, actions, suits and other legal and administrative proceedings and against and from any and all damages, losses, claims, liabilities, fines, penalties, costs, charges, fees, counsel fees and expenses and all other expenses of every type and nature which the City may sustain or incur, or which may be claimed against the City, by or on behalf of any person, taxpayer, firm, corporation or other legal entity arising from or related to:

- (i) the City's approval of the Bonds, its issuance of the Bonds and/or the lending by the City of the proceeds thereof, including, without limitation, as a result of
  - (a) the validity of the Bonds and/or the Financing Agreement and/or any other

documents related thereto or any provision of any thereof being challenged or (b) the Bonds and/or the Financing Agreement and/or any other documents relating thereto or any provision of any thereof having been held void or invalid by a court or any governmental entity;

(ii) any challenge, investigation or examination related to the exclusion from gross income of interest on the Bonds for federal income tax purposes, including, without limitation, any audit of the Bonds by the Internal Revenue Service or any court or governmental entity;

(iii) any breach or default on the part of the Borrower of any obligations under the Financing Agreement or any other documents related to the Bonds or the Financing Agreement;

(iv) any injury to or death of any person or any damage to property in or upon the capital facilities to be financed or refinanced with the proceeds of the Bonds (the "Project") or its premises or growing out of or connected to any construction of the Project, any condition of the Project or its premises or any use, occupancy, operation or maintenance of the Project or its premises;

(v) any act or negligence of the Borrower or any of its agents, contractors, servants, employees, licensees, assignees or lessees;

(vi) any statement or information provided by or on behalf of the Borrower to any purchaser of Bonds;

(vii) any violation of any law, ordinance, court order or regulation related to the Project or its premises or the ownership, occupancy or use thereof or the issuance of the Bonds or the loaning of the proceeds thereof to the Borrower; and

(viii) anything else related to or arising out of the issuance of the Bonds by the City, its lending of the proceeds thereof to the Borrower or its execution, delivery or performance under the Bonds, the Financing Agreement or any other documents or instruments related to any of the foregoing.

Promptly after receipt by an Indemnified Party of notice of any claims or action in respect of which indemnity may be sought against the Borrower pursuant hereto, such party will notify the Borrower in writing (at the notice address provided for by the Financing Agreement) of such action and, subject to the terms hereof, the Borrower shall assume the defense of such claim or action (including the employment of such counsel who shall be satisfactory to the Indemnified Party and the payment of the fees and expense related thereto). The Indemnified Party shall have the right to employ separate counsel in any such claim or action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Borrower unless the Indemnified Party reasonably determines that the employment of such separate counsel is necessary to protect its interests or to raise defenses not available to the Borrower.



The provisions of this Agreement are independent primary obligations of the Borrower, are in addition to all obligations and liabilities that the Borrower may otherwise have and shall survive the payment or defeasance of the Bonds and termination or expiration of the Financing Agreement and all other documents related thereto. The obligation of the Borrower to indemnify and defend the Indemnified Parties hereunder shall be enforceable notwithstanding the invalidity or unenforceability of the Bonds, the Financing Agreement or any documents related thereto.

SECTION 3. Governing Law; Jurisdiction; Consent to Service of Process.

(a) This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of Florida.

(b) The Borrower hereby irrevocably and unconditionally submits itself to the exclusive jurisdiction of the United States District Court for the Middle District of Florida and of the Circuit Court of the Tenth Judicial Circuit located in Polk County, Florida, and of any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such District Court, or Circuit Court or, to the extent permitted by applicable law, such appellate court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the City may otherwise have to bring any action or proceeding relating to this Agreement in the courts of any jurisdiction.

(c) The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in subsection (b) of this Section and brought in any court referred to in subsection (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 4. WAIVER OF JURY TRIAL. EACH PARTY HERETO IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAS BEEN INDUCED TO

ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 5. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

SECTION 6. Severability. Any provision of this Agreement held to be illegal, invalid or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity or unenforceability without affecting the legality, validity or enforceability of the remaining provisions hereof; and the illegality, invalidity or unenforceability of a particular provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Dated as of the date above written.

LAKE WALES CHARTER SCHOOLS, INC.

By: \_\_\_\_\_

Name:

Its:

CITY OF LAKE WALES, FLORIDA

By: \_\_\_\_\_

Name: Eugene Fultz

Title: Mayor

ATTEST:

By: \_\_\_\_\_

Name: Clara VanBlargan

Title: City Clerk

## PROMISSORY NOTE

Lake Wales Charter Schools, Inc., a Florida not-for-profit corporation (the "Borrower"), for value received, promises to pay to the order of the City of Lake Wales, Florida (the "Issuer"), and including Citizens Bank & Trust, a Florida banking corporation authorized to do business in Florida, and its successors, assigns and any transferee of the Bonds (as defined herein) (the "Lender"), the principal sum of FOUR MILLION ONE HUNDRED FORTY ONE THOUSAND and 00/100 DOLLARS (\$4,141,000) and to pay interest on the unpaid balance of such principal sum from and after the date hereof as hereinafter provided until the payment of such principal sum has been made pursuant to that certain Financing Agreement dated as of March 6, 2014, by and among the Issuer, the Borrower and the Lender (the "Financing Agreement").

This Promissory Note has been executed and delivered by the Borrower pursuant to the Financing Agreement and is subject to all terms and conditions of the Financing Agreement. Capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Financing Agreement. Under the Financing Agreement, the Issuer has agreed to loan the Borrower the principal proceeds received from the sale of the Issuer's Industrial Development Revenue Bonds (Lake Wales Charter Schools, Inc. Project), Series 2014 (the "Bonds") to provide for the payment in full of the Prior Obligation, and the Borrower has agreed to repay such loan by making payments ("Loan Payments") directly to the Lender at the times and in the amounts set forth in the Financing Agreement and this Promissory Note for application to the payment of the principal of and interest on the Bonds as and when due, or as otherwise provided in the Financing Agreement, and, in addition, to pay all Additional Payments as and when due under the Financing Agreement.

The Bonds have been issued, concurrently with the execution and delivery of this Promissory Note, pursuant to Resolution Nos. 2014-03 and 2014-04 of the Issuer adopted February 18, 2014 and March 4, 2014, respectively (collectively, the "Resolution").

To provide funds sufficient to pay the principal and interest on and any other payments due under the Bonds as and when due, the Borrower hereby agrees to and shall make Loan Payments pursuant to the Financing Agreement and this Promissory Note on the same date and in the same amount as the principal and interest and any other payment due on the Bonds through and including March 6, 2034, as reflected in the Financing Agreement.

In the event the Borrower shall default under the Financing Agreement, the entire outstanding principal amount of this Promissory Note shall bear interest at the Default Rate (as defined in the Financing Agreement).

All Loan Payments shall be payable in lawful money of the United States of America and shall be made to the Issuer or its assign at its designated office.

The obligation of the Borrower to make the payments required hereunder shall be absolute and unconditional and the Borrower shall make such payments without abatement,

diminution, postponement or deduction regardless of any cause or circumstances whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the Borrower may have or assert against the Issuer, the Lender or any other person.

This Promissory Note is subject to payment and prepayment upon the same terms and conditions, in the same amounts, on the same date or dates and at the same prepayment prices, if applicable, as the Bonds and the Borrower hereby agrees that it will make Loan Payments hereunder in an amount equal to satisfy the requirements of Section 3.01 of the Financing Agreement. Pursuant to the Financing Agreement, the Interest Rate on this Promissory Note is subject to adjustment as provided therein.

Whenever the principal of the Bonds then outstanding, and the interest accrued thereon, shall have been declared to be immediately due and payable pursuant to the Financing Agreement, the unpaid principal amount of and accrued interest on this Promissory Note shall, without further notice or demand, also be due and payable on the date on which the principal of and interest on the Bonds shall have been declared to be due and payable.

To the extent permitted by law, the Borrower waives demand, protest and notice of maturity, nonpayment or other notices necessary to hold the Borrower liable hereunder, except as required by the Loan Documents.

The enforcement and interpretation of this Promissory Note shall be governed by the laws of the State of Florida.

This Promissory Note is subject to all terms and conditions of the Financing Agreement, and by the purchase and acceptance of this Promissory Note, the owner hereof signifies consent to all of the provisions of the aforementioned document.

Should the Borrower fail to pay the installments of interest or principal (if applicable) 10 or more days after such payments are due, the Borrower further promises to pay, from the source provided herein, a late payment charge equal to five percent (5%) of the amount of the unpaid installment as liquidated compensation to the Issuer for the extra expense to the Issuer to process and administer the late payment, the Borrower agreeing, by execution hereof, that any other measure of compensation for a late payment is speculative and impossible to compute. Imposition of late charges is not contingent upon the giving of any notice or lapse of any cure period provided for in the Loan Documents and shall not be deemed a waiver of any right or remedy of the Issuer including without limitation, acceleration of this Promissory Note.

All of the rights, remedies, powers and privileges (together, "Rights") of any holder of this Promissory Note (each a "Holder") provided for in this Promissory Note and in any other Loan Document are cumulative of each other and of any and all other Rights at law or in equity. The resort to any Right shall not prevent the concurrent or subsequent employment of any other appropriate Right. No single or partial exercise of any Right shall exhaust it, or preclude any other or further exercise thereof, and every Right may be exercised at any time and from time to

time. No failure by the Issuer to exercise, nor delay in exercising any Right, including but not limited to the right to accelerate the maturity of this Promissory Note, shall be construed as a waiver of any Event of Default or as a waiver of the Right. Without limiting the generality of the foregoing provisions, the acceptance by the Issuer from time to time of any payment under this Promissory Note which is past due or which is less than the payment in full of all amounts due and payable at the time of such payment shall not (i) constitute a waiver of or impair or extinguish the right of the holder hereof to accelerate the maturity of this Promissory Note or to exercise any other Right at the time or at any subsequent time, or nullify any prior exercise of any such Right, or (ii) constitute a waiver of the requirement of punctual payment and performance or a novation in any respect.

If the Holder retains an attorney in connection with any Event of Default or at the Maturity Date or to collect, enforce or defend this Promissory Note or any other Loan Document in any lawsuit, at trial, or in any appellate, probate, reorganization, bankruptcy or other proceeding, or if the Borrower sues the Holder in connection with this Promissory Note or any other Loan Document and does not prevail, then the Borrower agrees to pay to the Holder, in addition to principal, interest and any other sums owing to the Holder under the Loan Documents, all reasonable costs and expenses incurred by the Issuer in trying to collect this Promissory Note or in any such suit or proceeding, including without limitation reasonable attorneys' fees, paralegals' fees and costs.

In no event (including but not limited to prepayment, default, demand for payment, or acceleration of maturity) shall the interest taken, reserved, contracted for, charged or received under this Promissory Note or under any of the other Loan Documents or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, then *ipso facto*, such document shall be reformed and the interest payable reduced to the Maximum Amount, without necessity of execution of any amendment or new document. If the holder hereof ever receives interest in an amount which apart from this provision would exceed the Maximum Amount, the excess shall, without penalty, be refunded to the Borrower, or at the option of the Borrower, be applied to the unpaid principal of this Promissory Note and not to the payment of interest. The Issuer does not intend to charge or receive unearned interest on acceleration. All interest paid or agreed to be paid to the Issuer shall be spread throughout the full term (including any renewal or extension) of the debt so that the amount of interest does not exceed the Maximum Amount.

IN WITNESS WHEREOF, the Borrower has caused this Promissory Note to be executed in its name on this 6<sup>th</sup> day of March, 2014.

LAKE WALES CHARTER SCHOOLS, INC.

By: \_\_\_\_\_  
Its:

ATTEST:

By: \_\_\_\_\_  
Its:

This Promissory Note is hereby assigned (except for Reserved Rights), without recourse or warranty, to Citizens Bank & Trust, as Owner of the Bonds.

Dated: March 6, 2014

CITY OF LAKE WALES, FLORIDA

By: \_\_\_\_\_  
Title: Mayor

ATTEST:

By: \_\_\_\_\_  
Title: City Clerk

[Signature Page | Promissory Note]