

Miami-Dade County Public Schools
Office of Management and Compliance Audits



**AUDIT OF SELECTED FINANCIAL,
REAL ESTATE AND OPERATIONAL TRANSACTIONS
AND CONTRACTUAL ARRANGEMENTS:
KEYS GATE CHARTER HIGH SCHOOL**

This audit was conducted to gain an understanding of complex financing and real estate transactions for which the School's expenditures are used and communicate said to the School Board, Audit and Budget Advisory Committee and District Administration, in accordance with the Sponsor's statutory oversight responsibilities.

September 2015

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

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Ms. Raquel A. Regalado

Mr. Alberto M. Carvalho
Superintendent of Schools

Mr. José F. Montes de Oca, CPA
Chief Auditor
Office of Management and Compliance Audits

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Miami-Dade County Public Schools

giving our students the world

Superintendent of Schools
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José F. Montes de Oca, CPA

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September 22, 2015

The Honorable Chair and Members of The School Board of Miami-Dade County, Florida
Members of the School Board Audit and Budget Advisory Committee
Mr. Alberto M. Carvalho, Superintendent of Schools

**Subject: Audit of Selected Financial, Real Estate and Operational Transactions
and Contractual Arrangements: Keys Gate Charter High School**

We performed the subject audit in accordance with our FY 2014-15 Annual Audit Plan, which was approved by the Audit and Budget Advisory Committee (ABAC) and the School Board at their meetings of September 16 and October 7, 2014, respectively.

The objectives of this audit were:

- 1) to gain an understanding of complex financing and real estate transactions for which the School's expenditures are used and communicate said to the School Board, Audit and Budget Advisory Committee and District Administration, in accordance with the Sponsor's statutory oversight responsibilities, and
- 2) to determine whether the School's operations and transactions were proper; transparent; in the best interest of the charter school, students, parents/guardians and the community at large; and in accordance with applicable laws, rules, and regulations.

Charter Schools have become a substantial component of K-12 public education in Florida and Miami-Dade County. For the year ended June 30, 2014, approximately \$400 million flowed to 126 charter schools operating in Miami-Dade County under the School Board's sponsorship.

The structure of financing and facility ownership/leasing described herein, or variations of it, appears to be approaching a commonplace status as a mechanism to acquire charter school facilities.

A significant portion of our report, mostly pages 6 through 12, is dedicated to explanation, description and illumination of these financing and real estate arrangements, by way of presenting various charts, tables, graphics and narrative. Page 10 delineates the School's uses of its tax exempt bond issuance/loan proceeds.

The report contains six findings and ten corresponding recommendations. The School's Governing Board and its management company agreed or mostly agreed with four of our ten recommendations. Regarding five recommendations, the School and management company respectfully took the position that sufficient controls or protections are already in place, and therefore implementation is unnecessary. One recommendation was not addressed in the response.

In addition to responding to the report's findings and recommendations, the written response contains certain claims and assertions that were outside the scope of the audit, including statements comparing the cost effectiveness of building charter school and traditional school facilities. We did not audit these additional assertions contained in the response from the School and management company, and do not attest to their veracity.

Also, although the School's representatives cooperated with us and provided requested documentation throughout the audit, a portion of the written response objects to the scope of the audit and challenges our audit authority in extending the review beyond the lease of the facility and the yearly operational use of public monies. We respectfully but strongly disagree with the suggested limitation to the audit's scope and objectives. The M-DCPS sponsored school is a co-borrower on the \$23.5 million loan to finance the construction of the facility, and the use of the School's loan proceeds must be transparent. Also, please note that the tax-exempt bond issuance is fully dependent on the sponsored school's tax-exempt status.

The Report's Executive Summary begins on page 1, and the detailed findings and recommendations begin on page 13. Appendix B, beginning on page 32, contains the School's response to our findings and recommendations in its entirety.

I would like to thank the representatives of the School and its management company for the cooperation and consideration afforded to my staff during this audit.

Sincerely,



Jose F. Montes de Oca, CPA, Chief Auditor
Office of Management and Compliance Audit

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
AUTHORITY, OBJECTIVES, SCOPE AND METHODOLOGY.....	5
BACKGROUND INFORMATION.....	6
TIMELINE.....	8
FLOW OF FUNDS RAISED THROUGH THE BOND ISSUANCE/LOAN.....	9
USE OF \$23.5 MILLION LOAN PROCEEDS	10
ENTITIES' RELATIONSHIPS AND FLOW OF FUNDS	12
FINDINGS AND RECOMMENDATIONS	13
1. LEASE AGREEMENT BETWEEN RED APPLE AT HOMESTEAD HIGH SCHOOL, LLC AND RENAISSANCE CHARTER SCHOOL, INC	13
2. INCORRECT GROUND LEASE PAYMENTS TO CITY OF HOMESTEAD	19
3. MANAGEMENT AGREEMENT	21
4. NO REQUIREMENT FOR DUAL AUTHORIZED SIGNATURES FOR CHECKS ISSUED IN AN AMOUNT GREATER THAN A SPECIFIED LIMIT	24
5. DISCLOSURES IN AUDITED FINANCIAL STATEMENTS	25
6. FINANCIAL OPERATIONS OF SCHOOL APPEAR TO DIFFER FROM VARIOUS CONTRACTS AND AGREEMENTS.....	27
APPENDICES:	
APPENDIX A: LETTER DATED APRIL 23, 2015 REGARDING RED APPLE INTENT OF POSSIBLE TRANSFER OF OWNERSHIP OF HIGH SCHOOL PROPERTY FROM CITY OF HOMESTEAD TO RED APPLE.....	30
APPENDIX B: RENAISSANCE CHARTER SCHOOL, INC. (KEYS GATE CHARTER HIGH SCHOOL) RESPONSE	32

EXECUTIVE SUMMARY

As of June 30, 2014, Keys Gate Charter High School (KGCHS) was one of 25 charter schools under the not-for-profit legal entity Renaissance Charter School, Inc. Three of the schools, including KGCHS, are sponsored by the Miami-Dade County School Board and are operating in Miami-Dade County.

The Renaissance Charter School, Inc. contracts with the for-profit charter school management company Charter Schools USA (CSUSA) to manage each of its schools. Red Apple Development, LLC (Red Apple), an affiliate of CSUSA, was contracted to develop/build the KGCHS facility and upon completion, lease the facility to the School.

Keys Gate Charter High School's revenues and expenses for FY 2013-14 were \$8,461,315 and \$8,416,211, respectively. Its Net Position as June 30, 2014 was a deficit of \$(2,564,367), and its Total Fund Balance was \$778,175. The School's external audit firm determined that the School did not meet any of the financial emergency conditions described in Section 218.503, Florida Statutes, and was not in a deteriorating financial condition pursuant to Section 10.855, Rules of the Auditor General.

As of June 30, 2014, the High School's enrollment was 1,111 students. KGCHS received a grade of C under the State of Florida's Academic Accountability system for the 2013-14 school year.

Pages 6 through 12 of this report are dedicated to explanation, description and illumination of fairly complex financing and real estate arrangements, by way of presenting various charts, tables, graphics and narrative. Page 10 delineates the School's uses of its tax exempt bond issuance/loan proceeds.

Public Discussion of the School's Lease and Management Agreements

Section 1002.33, Florida Statutes states: "the governing body of the Charter school shall exercise continuing oversight over charter school operations." Charter schools are also required to comply with Section 286.011, Florida Statutes, relating to public meetings and records, and requiring the School's business to be discussed and approved by the Governing Board at a publicly noticed meeting "in the sunshine."

Governing Board minutes provided by the School's representatives lack any mention of the current lease or management agreements and lack any evidence of the Board's contemplation or discussion of their various components of rent, fees, terms and other provisions.

When we presented our concerns to the School's representatives about the lack of evidence of discussion in the minutes, they indicated to us that the proposed agreements

had, in fact, been thoroughly considered and discussed by the Board. They suggested that the issue at hand was a matter of documentation, and agreed that the Governing Board meeting minutes could be more thorough and better documented.

Without contemporaneous documentation or other evidence being provided, such as sufficiently detailed meeting minutes or audio recordings, we cannot confirm that the School's Governing Board publicly contemplated and discussed the various components of rent, fees, terms and other provisions of these agreements prior to entering into these contracts. (please see page 13 and 21 for more details)

Facility Lease/Incremental Rent

On June 1, 2011, Tax Exempt Educational Facilities Revenue Bonds were issued to finance the acquisition of the facilities of six charter schools existing under Renaissance Charter School, Inc., including the KGCHS facility.

On June 30, 2011, Red Apple at Homestead High School, LLC contracted to lease the facility that had been designed and constructed for KGCHS, to the High School's legal entity, Renaissance Charter School, Inc. for a term of 45 years. The facilities were designed and constructed using (or reimbursed by) the proceeds from the issuance of the tax exempt bonds.

This lease from Red Apple to Renaissance for the KGCHS facility comprises three components of rent payable by the tenant (Renaissance/Keys Gate Charter High School): Base Rent, Additional Rent and Incremental Rent.

Base Rent serves as the mortgage payment for debt service on the underlying bond issuances. Additional Rent provides that the tenant will be charged should the leased property be assessed for items such as taxes or other assessments.

Incremental Rent serves as an additional source of revenue/profit for Red Apple for numerous services, most of which were provided during the planning and construction of the facility, including work performed and risk assumed prior to the issuance of the tax-exempt bonds in June 2011. Said revenue/profit through receipt of Incremental Rent is above and beyond the development fees charged up front by Red Apple (\$500,000), another undisclosed developer (\$500,000), and another construction management company (\$95,000).

Incremental Rent increases substantially each year from \$170,000 in FY 2013-14 to \$1.67 million in FY 2040-41, totaling \$24.6 million during the first 30 years of the lease. However, it should be noted that the School's enrollment is already near capacity (1159

of 1200 as of February 2015), and its ability to significantly increase its revenue to meet these substantially escalating costs is therefore limited.

Although Incremental Rent, according to the Indenture of Trust, is subordinate to payments for such items as bond debt service, budgeted operating expenses and repair and replacement reserve fund, if the School is unable to pay Incremental Rent, it could be in default of the Lease Agreement and subject to eviction.

We recommend to the School's Governing Board that they dialogue and negotiate with Red Apple to amend the Lease Agreement to more fully protect the School's interests should the School be unable to pay Incremental Rent. (see page 13 for more details)

Incorrect Ground Lease Payments to City of Homestead

We found that rent payments to the City of Homestead for the Ground Lease between the City of Homestead and Red Apple were incorrectly paid using the School's funds. Based on the Ground Lease rent schedule, copies of sampled cancelled checks, and correspondence with the School's management company, the School has paid the City \$293,500 from September 2011 through June 30, 2015, on behalf of Red Apple.

We recommend that the School's Governing Board and contracted management company enforce Red Apple's reimbursement to the School of monies that were incorrectly paid from the School's operating account to the City of Homestead for Red Apple's Ground Lease liability. Prospectively, the Ground Lease rents should be rightfully paid to the City by Red Apple, not the School. The School's Governing Board and its contracted management company should strengthen their governance oversight and management controls to ensure that the School's funds will not be incorrectly spent for the benefit of the management company's affiliate. (see page 19 for more details)

Additional Recommendations Resulting From Our Audit Include:

- To enhance controls over cash disbursements, and better involve the Governing Board with oversight of the School's operations, the School's Governing Board should require two signatures on checks issued for amounts above a specified limit, wherein the second signature would be that of a Governing Board member. (see page 24 for more details)
- The notes to the audited financial statements should disclose that Red Apple Development, LLC and Connex 12, LLC are owned by the President and CEO of Charter Schools USA, the School's management company. (see page 25 for more details)
- The School's Governing Board should consult with its legal counsel and contracted management company and evaluate the legal contracts, agreements and documents involving the School and its affiliates to ensure compliance

between contractual agreements and the manner in which they are being executed. (see page 27 for more details)

- Notwithstanding evidence provided that CSUSA partly or fully forgave its management fee in two of the first three years of the current management agreement, the School's Governing Board should request of CSUSA that said stated practice of forgiveness be contractually formalized through an amended Management Agreement. (see page 21 for more details)

AUTHORITY, OBJECTIVES, SCOPE AND METHODOLOGY

We performed an audit of the Keys Gate Charter High School in accordance with our FY 2014-15 Annual Audit Plan. Contractual authority to conduct the audit is found in Section 4. Paragraph F.7 of the charter contract between The School Board of Miami-Dade County, Florida and Renaissance Charter School, Inc. (Renaissance) on behalf of Keys Gate Charter High School (KGCHS). The audit objectives were:

- 3) to gain an understanding of complex financing and real estate transactions for which the School's expenditures are used and communicate said to the School Board, Audit and Budget Advisory Committee and District Administration, in accordance with the Sponsor's statutory oversight responsibilities, and
- 4) to determine whether the School's operations and transactions were proper; transparent; in the best interest of the charter school, students, parents/guardians and the community at large; and in accordance with applicable laws, rules, and regulations.

We also endeavored to make value added observations and recommendations for consideration by Miami-Dade County Public Schools, Keys Gate Charter High School/ Renaissance Charter School, Inc., and other stakeholders and policy makers.

The scope of transactions reviewed, whether for background or substantive testing purposes, ranged from 2010 through 2015.

Audit procedures included:

- Reviewing applicable statutes, laws, policies, procedures and best practices,
- Reviewing various contracts and agreements, including the charter agreements, management contracts, lease agreements and the indenture of trust,
- Reviewing minutes of charter school governing board meetings and audited financial statements,
- Requesting information from various entities including Keys Gate Charter High School (Renaissance Charter School, Inc.), Charter Schools USA, Red Apple Development, and the School's Certified Public Accountants,
- Interviewing numerous School representatives including the Governing Board Chair, management company staff and the School's external auditors,
- Consulting with legal counsel,
- Conducting an on-site visit and walk-through of the School,
- Accessing and reviewing public records, including Secretary of State records, property tax records, building documents and other data found online,
- Filing of public information requests,

- Researching GAAP (Generally Accepted Accounting Principles) and certain GASB (Government Accounting Standards Board) standards and pronouncements,
- Researching state and national school performance indicators,
- Compiling financial and non-financial data about District sponsored charter schools,
- Tracing the flow of funds and transactions between various entities,
- Performing analytical procedures.

We conducted this performance audit in accordance with generally accepted Government Auditing Standards issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

BACKGROUND

Charter Schools

Charter Schools have become a substantial component of K-12 public education in Florida and Miami-Dade County. For the year ended June 30, 2014, approximately \$400 million flowed to 126 charter schools operating in Miami-Dade County under the School Board's sponsorship.

Like traditional public schools, charter schools are funded with local, state and federal tax dollars. The funding is largely derived from the Florida Education Finance Program (FEFP) in which the magnitude of funding is determined by weighted full-time equivalent (FTE)/enrollment in the school during date-certain survey periods in October and February. Those public funds to operate the charter schools are distributed to the schools throughout the school year by the sponsoring school district.

Charter schools in Florida are required to be organized as, or be operated by, a non-profit organization. The schools typically have a tax exempt status under Section 501(c)(3) of the Internal Revenue Code and their facilities are exempt from ad valorem taxes pursuant to Section 196.1983, Florida Statutes.

Keys Gate Charter High School

As of June 30, 2014, Keys Gate Charter High School was one of 25 charter schools under the not-for-profit legal entity Renaissance Charter School, Inc. Three of the schools, including KGCHS, are sponsored by the Miami-Dade County School Board and are operating in Miami-Dade County.

The Renaissance Charter School, Inc. contracts with the for-profit charter school management company Charter Schools USA (CSUSA) to manage each of its schools. Red Apple Development, LLC,¹ an affiliate of CSUSA, was contracted to develop/build the KGCHS facility and upon completion, lease the facility to the School.

The Governing Board of Renaissance Charter School, Inc. as of June 30, 2014, comprised:

- Mr. Ken Haiko, Chair
- Mr. Dennis Clark, Vice-Chair
- Ms. Peggy Wells, Treasurer
- Mr. John O'Brien, Director
- Mr. Thomas Wheeler, Director

Keys Gate Charter High School's revenues and expenses for FY 2013-14 were \$8,461,315 and \$8,416,211, respectively. Its Net Position as of June 30, 2014 was a deficit of \$(2,564,367), and its Total Fund Balance was \$778,175. The School's external audit firm determined that the School did not meet any of the financial emergency conditions described in Section 218.503, Florida Statutes, and was not in a deteriorating financial condition pursuant to Section 10.855, Rules of the Auditor General.

As of June 30, 2014, the High School's enrollment was 1,111. KGCHS received a grade of C under the State of Florida's Academic Accountability system for the 2013-14 school year.

Understanding of Complex Financing and Real Estate Transactions

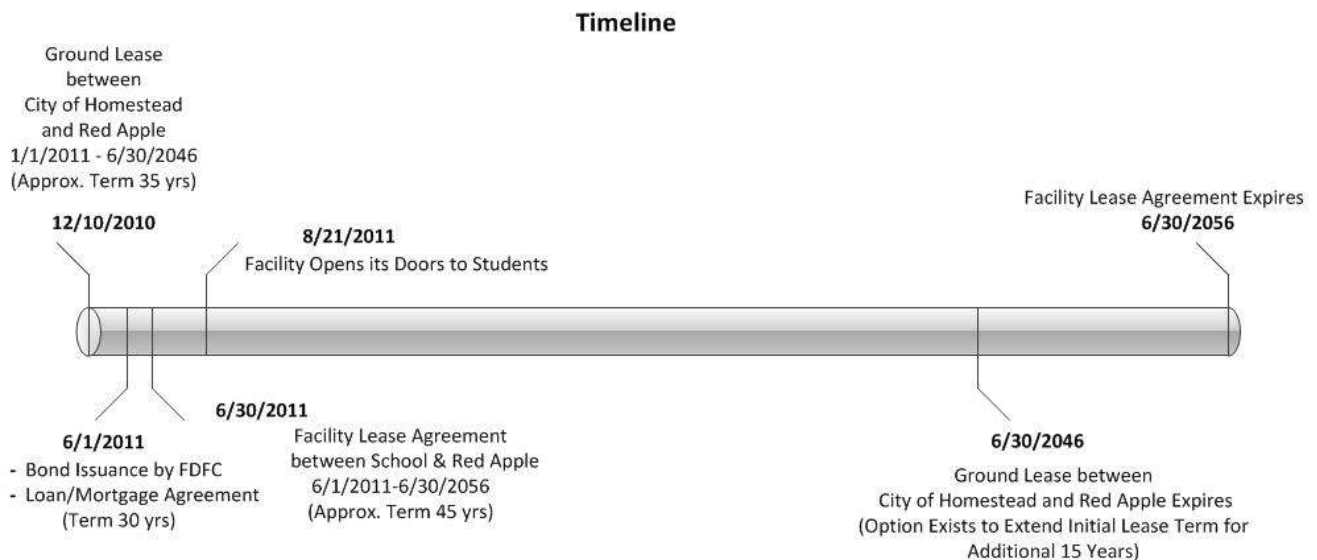
Red Apple Development, LLC contracted with the City of Homestead on December 15, 2010, as the lessee in a 35 year ground lease for the development, construction and operation of a new charter high school in Homestead. The annual rent payable to the City under this ground lease ranges from \$60,000 in the first year to approximately \$145,000 in the thirty-fifth year. The lease contains an option for the lessee to extend the term an additional fifteen years.

¹ For purposes of simplicity in this report, the term Red Apple may serve to represent Red Apple Development, LLC, and/or Red Apple at Homestead High School, LLC, which is the affiliate directly established for Keys Gate Charter High School.

On June 1, 2011, the Florida Development Finance Corporation² issued \$86,055,000 in Tax Exempt Educational Facilities Revenue Bonds (Renaissance Charter School, Inc. Project) Series 2011A and \$3,180,000 in Taxable Educational Facilities Revenue Bonds Series 2011B pursuant to an indenture of trust to make a loan to Renaissance Charter School, Inc. and Red Apple Development, LLC and subsidiaries. The loan was to finance the acquisition of the facilities of six charter schools existing under Renaissance Charter School, Inc. Included in this transaction was \$23,545,000 (\$23,300,000 tax exempt and \$245,000 taxable) loaned to Renaissance Charter School, Inc. and Red Apple at Homestead High School, LLC as co-borrowers, to be used for the construction/development of the Keys Gate Charter High School facility.

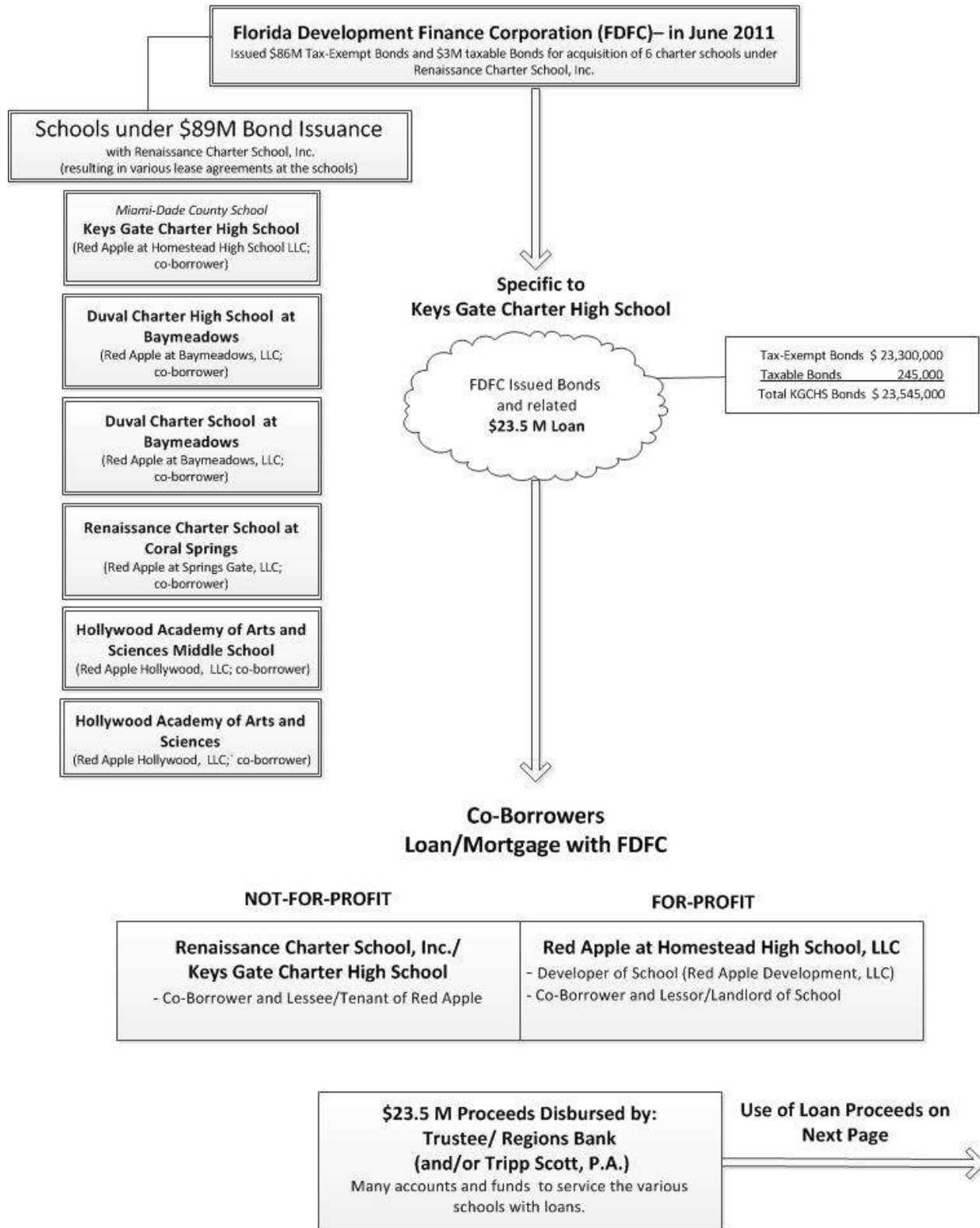
According to the Mortgage and Loan Agreement between and among the aforementioned entities, dated June 1, 2011, the term of the loan is 30 years (corresponding with the underlying bond issuances) with the last principal and interest payment to be made June 15, 2041. Based on the Trust Indenture, the Loan proceeds were to be disbursed from the project fund bank account. That account was housed at the Trustee, Regions Bank.

On June 30, 2011, as part of the overall arrangement described in the various bond issuance and loan/mortgage agreements, Red Apple at Homestead High School, LLC leased the facility to the High School’s legal entity for a term of approximately 45 years (as further described in finding 1).



² Florida Development Finance Corporation (or FDFC) is a state authorized issuer of industrial revenue bonds.

The following charts/tables depict the flow of funds raised through the bond issuance/loan and the use of the proceeds as indicated by the representatives of the School and Red Apple.



Keys Gate Charter High School Construction Project
\$23,545,000 Use of Loan Proceeds
(Pursuant to FDFC Bond Issuance and Related Mortgage Loan)

Use of Loan Proceeds per Information Provided by School Representatives

General Contractor Fees (JJW Construction, Inc.)	\$ 15,704,746.41
Interest and Other Costs on Interim Construction Loan	327,221.68 ¹
Development & Other Costs/Construction Manager Fees Totaling \$1,095,000:	
Red Apple Development, LLC	500,000.00
Undisclosed Party	500,000.00 ²
Berrones Consulting & Construction Management, LLC	95,000.00 ³
Soft Costs - Design and Engineering Fees (Architect & Engineering):	389,150.07
LAI Design Associates, LLC	\$244,434.68
Corporate Directions, Inc.	91,442.89
Frاندrel Consulting, Inc.	53,272.50
Soft Costs - Other (Permits, Appraisals, Surveys, Legal & Other)	189,943.64
<u>Total Cost of Facility</u>	<u>\$ 17,706,061.80</u>
Debt Service Reserve Fund (Deposited at Trustee)	1,997,961.31
Cost of Issuance (Bonds)	235,762.71
Capitalized Interest (Deposited at Trustee)	1,719,000.00
Underwriter's Discount (Bonds)	441,281.25
Additional Proceeds	6,472.37
Outfitting of School (Furniture & Fixtures Technical, Leasehold Improvements)	1,106,928.91
<u>Total Uses of Funds</u> (Same as Net Proceeds of Loan) (Same As Sources of Funds After Discount to Investors)	<u>\$ 23,213,468.35</u>
Bond Discount (Discount to Investors)	321,531.65
Difference Noted in Schedule Provided by School Representatives	10,000.00
<u>Total Loan Proceeds per Mortgage Loan</u> (PAR Value of Bond Issuance)	<u>\$ 23,545,000.00</u>

¹ Prior to the bond issuance and related loan proceeds issued in June 2011, Red Apple incurred and paid for construction related costs for Keys Gate Charter High School using its own \$4.5 Million interim loan. The \$327,221.68 costs represent the loan costs incurred by Red Apple and subsequently paid/reimbursed by the School. Per information provided by Charter Schools USA at the time of this audit, within these costs is an amount of \$53,860.82 that is owed to the school, but currently remains in trust with Tripp Scott, P.A., the attorneys of Red Apple and Charter Schools USA.

² This \$500,000 amount, categorized as 3rd Party Development Costs by school representatives, was paid to an undisclosed party as part of a settlement agreement on a contract.

³ This \$95,000 amount was partial payment on a \$400,000 contract dated February 21, 2011 between Red Apple Development, Inc. (per contract, as agent for Renaissance Charter School, Inc.) and Berrones Consulting & Construction Management, LLC. The contract was for construction management services. The \$95,000 was paid from bond/loan proceeds, while the remaining \$305,000 was paid by Red Apple.

As shown in the Use of Bond/Loan proceeds table on the previous page, the total cost of the facility represented to us by the co-borrowers was \$17.7 million, while the remaining expenditures of \$5.8 million were used for the various costs of issuing the bonds, and for outfitting the School with furniture, fixtures and equipment.

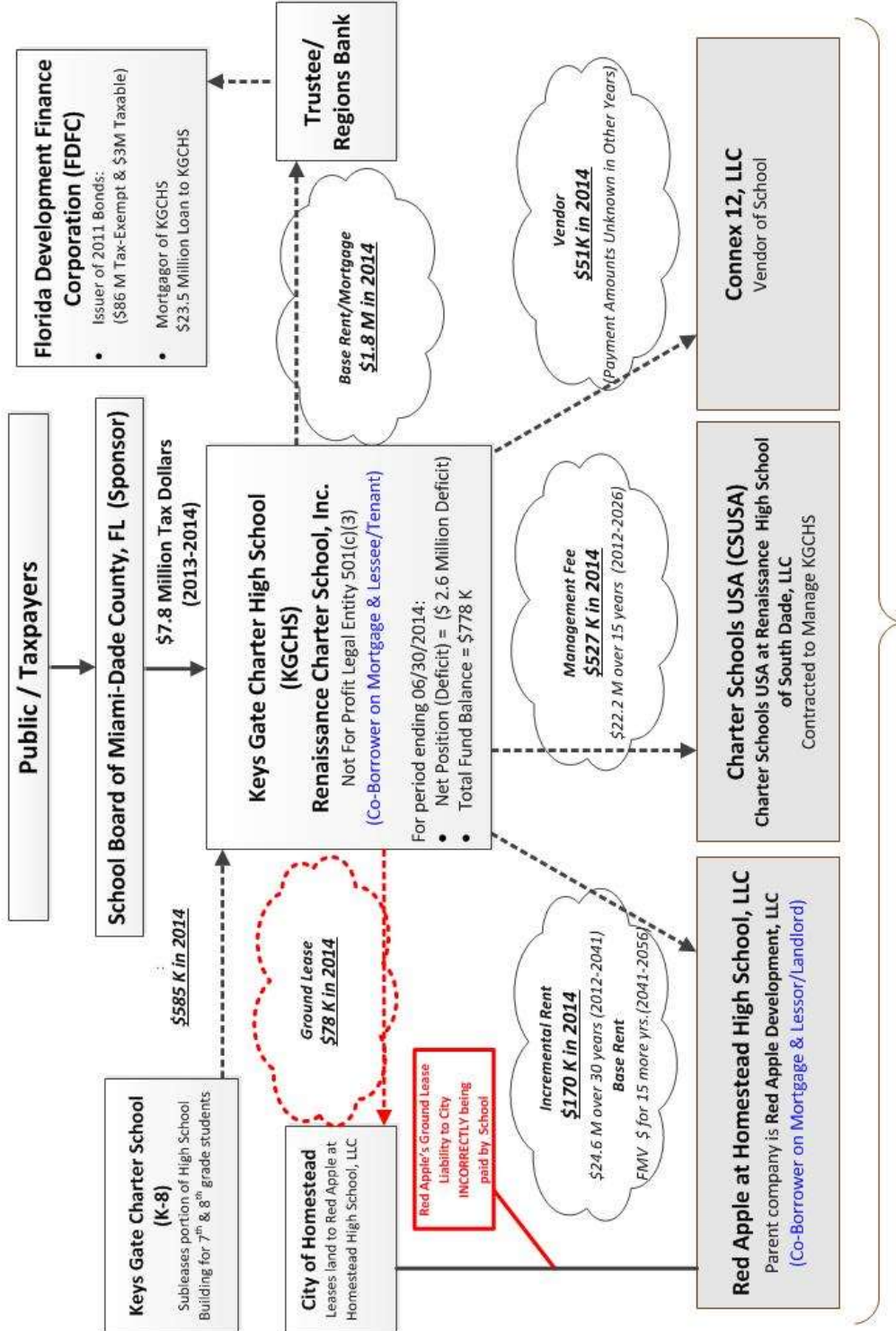
Documentation was provided to us evidencing that \$15.7 million of the \$17.7 million was paid to the general contractor for construction of the facility and approximately \$389,000 was paid to three firms for various design and engineering fees. The documentation provided further evidences that \$500,000 of the proceeds was paid to Red Apple Development for various development and construction management fees, \$500,000 was paid to an undisclosed party, and \$95,000 was paid to Berrones Consulting and Construction Management, LLC, a Miami based company, also for construction management services.

With regard to the \$500,000 that was paid to an undisclosed party, representatives of Red Apple indicated to us that the amount was paid to a third party developer independent of Red Apple as part of a confidential settlement agreement. Red Apple offered to provide us the identity of the payee and documentation evidencing services provided contingent on us signing a non-disclosure agreement (NDA). We were advised by our attorneys not to sign the NDA.

Notwithstanding the above, absent the transparency of that portion of the School's loan proceeds, we cannot confirm that such expenditures were used for their intended purposes.

The following chart depicts the flow of funds between and among KGCHS and other various for-profit or not-for-profit entities during FY 2013-14.

Entities' Relationships and Flow of Funds (FY 2013-2014)



FOR-PROFIT ENTITIES WITH COMMON OWNERSHIP

FINDINGS AND RECOMMENDATIONS

1. Lease Agreement Between Red Apple at Homestead High School, LLC and Renaissance Charter School, Inc.

On June 30, 2011, Red Apple at Homestead High School, LLC contracted to lease the facility that had been designed and constructed for KGCHS, to the High School's legal entity, Renaissance Charter School, Inc. for a term of 45 years. As stated earlier in this report, the facilities were designed and constructed using (or reimbursed by) the proceeds from the issuance of tax exempt bonds.

The lease was executed on June 30, 2011, with Mr. Ken Haiko signing as President of Renaissance Charter School, Inc., and Mr. Jonathan Hage signing as President of Red Apple at Homestead High School, LLC.

a. Public Discussion of Lease Agreement

Section 1002.33, Florida Statutes states: "the governing body of the charter school shall exercise continuing oversight over charter school operations." Charter schools are also required to comply with Section 286.011, Florida Statutes, relating to public meetings and records, and requiring the School's business to be discussed and approved by the Governing Board at a publicly noticed meeting "in the sunshine."

Governing Board minutes provided by the School's representatives lack any mention of the lease agreement and lack any evidence of the Board's contemplation or discussion of the lease agreement's various components of rent, terms and other provisions.

When we presented our concerns to the School's representatives about the lack of evidence of discussion in the minutes, they indicated to us that the proposed lease agreement had, in fact, been thoroughly considered and discussed by the Board. They suggested that the issue at hand was a matter of documentation, and agreed that the Governing Board meeting minutes could be more thorough and better documented.

Without contemporaneous documentation or other evidence being provided, such as sufficiently detailed meeting minutes or audio recordings, we cannot confirm that the School's Governing Board publicly contemplated and discussed the lease agreement's various components of rent, terms and other provisions prior to entering into the contract.

b. Components of Rent

This lease from Red Apple to Renaissance for the KGCHS facility comprises three components of rent payable by the tenant (Renaissance/Keys Gate Charter High School) as follows:

i. Base Rent – The base rent serves as the mortgage payment to repay the principal and interest for the \$23,545,000 loan that was made to Renaissance and Red Apple as co-borrowers, and as debt service for the underlying bond issuances. It is payable monthly to Regions Bank as the Trustee for the bond issuances as outlined in Exhibit B of the lease agreement. The loan and underlying bonds are paid off in 30 years with the first payment commencing August 1, 2011, and the last payment to be made in June 2041.³ Base rent paid by Renaissance to the Trustee approximated \$1.8 million in FY 2013-14 (over the 30 years, Base Rent will total \$62.2 million, comprised of \$23.5 million principal and \$38.7 million interest).

ii. Additional Rent – As defined in the lease agreement, this rent comprises all Charter Revenues and Additional Revenue in excess of Base Rent other than Incremental Rent. Article IV, Section 4 of the Lease Agreement, indicates that Additional Rent could include items such as taxes and assessments which may be assessed, levied or imposed upon all or any part of the Leased Property.

iii. Incremental Rent – Article IV, Section 1 of the lease agreement states: “Tenant shall pay Landlord an additional component of rent (“Annual Incremental Rent”) in the annual amount set forth on the attached Exhibit C. Tenant shall pay one twelfth of the applicable Annual Incremental Rent to the Trustee with each monthly payment of Base Rent during the lease term...”⁴ Exhibit C of the lease agreement indicates that annual incremental rent ranges from \$70,000 in FY 2012 to approximately \$1.67 million in FY2041, and totals \$24.6 million over the first thirty years of the lease. For the year ended June 30, 2014, incremental rent paid from Renaissance to Red Apple was \$170,000.

³ After the June 2041 payment when the bond debt will be fully satisfied, this lease agreement describes that base rent will continue and shall be reset at fair market value (based on an MAI certified appraisal).

⁴ Based on documentation provided by the School, KGCHS/Renaissance is actually making its monthly incremental rent payment directly to Red Apple, rather than the Trustee. (See Finding 6)

Based on discussions with representatives of CSUSA and Red Apple and review of the lease agreement,⁵ Incremental Rent serves as an additional source of revenue/profit for Red Apple for numerous services provided mostly during the planning and construction of the facility, including work performed and risk assumed prior to the issuance of the tax-exempt bonds in June 2011. It is noteworthy that said revenue/profit through receipt of Incremental Rent is above and beyond the development fees charged up front by Red Apple (\$500,000), another developer (\$500,000), and another construction management company (\$95,000).

c. Inability of the School to Pay Incremental Rent to Red Apple Development is a Condition of Default

Article XII, Section 1(a) of the lease agreement specifies that the Tenant's failure to pay Base Rent or Additional Rent constitutes an event of default. Section 1(b) provides that the Tenant's failure to observe or perform any other material term, covenant or condition required by it in the lease also constitutes an event of default. Article XII, Section 2, states a remedy of Tenant default as: "Tenant shall then quit and surrender the Leased Property to Landlord, but Tenant shall remain liable for damages as otherwise provided in this Section."

The Indenture of Trust between Florida Development Finance Corporation and Regions Bank indicates that payment of Incremental Rent is subordinate to payments for such items as bond debt service, budgeted operating expenses and repair and replacement reserve fund. However, our review of all relevant contracts and other documentation did not disclose any contractual provisions that would preclude Red Apple from exercising the lease contract's default provision and evicting the School should the School be unable to pay scheduled Incremental Rent. Likewise, we found no language addressing the deferral versus the forgiveness of unmet Incremental Rent payments.

Incremental Rent increases substantially each year from \$170,000 in FY 2013-14 to \$1.67 million in FY 2040-41. However, the School's enrollment is already near capacity (1159 of 1200 as of February 2015), and its ability to significantly increase its revenue to meet these substantially escalating costs is therefore limited.

⁵ Other Costs Already Being Paid Directly by "Tenant" – KGCHS (Renaissance Charter School, Inc.) and Not Included in Incremental Rent

The lease contract stipulates that the "Tenant, and not Landlord, shall maintain and repair the entire Leased Property, at Tenant's sole expense, in good repair and condition and shall keep the entire Leased Property in a clean and sanitary condition." The lease also requires the Tenant to pay all utilities and insurance expenses. The School's separate management company fee pursuant to its contract with CSUSA, already includes services such as "the administration, operation and performance of the School in accordance with the Charter" and "all aspects of the business administration of the School."

d. Option to Extend Ground Lease

Article II, Section 2.3 of the Ground Lease between Red Apple and the City of Homestead provides Red Apple the option to extend the initial term of the Ground Lease (current expiration on 6/30/2046) by an additional 15 years. This option can be exercised by Red Apple anytime from the beginning of the initial term of the ground lease until one year prior to the current expiration date. Once the option is exercised by Red Apple, the City has the right to cancel said option within 60 days, but must compensate Red Apple at a mutually agreed upon price (or if unable to agree, at FMV of the Option as determined by an appraiser) if it chooses to cancel the option.

Article III, Section 7 of the Facility Lease between Red Apple and the School (Renaissance/KGCHS) states, in part, "If the Ground Lease is terminated, regardless of the reason, the Tenant shall have no recourse against the Sublessor, except the reimbursement of any advanced rent which will not be used due to the automatic termination of this Sublease."

Should the City and Red Apple not extend the Ground Lease an additional 15 years, the School's Facility Lease will terminate after approximately 35 years on 6/30/2046 (i.e., 10 years prior to its scheduled 45 year term ending on 6/30/2056), and the School could be forced to relocate accordingly.

Recommendations

1.1 In order to demonstrate compliance with Florida Statutes, and provide evidence it is the independent driving force in the School's decision making, the Governing Board should have and document robust public contemplation and discussion of a proposed lease agreement's various components of rent, terms and other provisions prior to entering into a contract of the lease's magnitude and complex nature.

Renaissance Charter School, Inc.'s (KGCHS's) Response

MDSB audit suggests the Renaissance Meeting Minutes need to provide greater detail. While the meeting minutes could have been more robust; the lease, management agreement, and other documents were indeed subject to robust public contemplation, discussion and review, as well as extensive analysis, appropriate scrutiny and negotiation.

OMCA's Comments

The School's representatives agree with our recommendation that the meeting minutes could be more robust. Again, no evidence was provided to us to support the School's assertions and claims that the Lease Agreement was thoroughly and appropriately vetted in a properly noticed public Governing Board meeting.

1.2 The School's Governing Board should dialogue and negotiate with Red Apple to amend the Lease Agreement to more fully protect the School's interests should the School be unable to pay Incremental Rent (which increases from \$170,000 in FY 2013-14 to \$1.67 million in FY 2040-41). The amended Lease Agreement should stipulate that Incremental Rent charges that the School is unable to pay, without resulting in a deficit total fund balance at fiscal year-end, will not be a condition of default and will be automatically forgiven rather than deferred.

Renaissance Charter School, Inc.'s (KGCHS's) Response

There is much discussion devoted in the MDSB audit regarding rent (and components of rent). As stated above, this was a heavily negotiated issue. The rent started as one component; however, the School wanted greater protection of its operations where actual School Operating Expenses remained the priority. Renaissance wanted greater certainty for the School, its Educational Model and student experience. A portion of the rent was separated into incremental rent. This allowed this portion of the rent to be treated differently. The lease and other transaction documents subordinated incremental rent to the School's Operating Expenses. With the subordination feature and Renaissance's control of the School's Operating Expenses through the budget process, Renaissance, and Renaissance alone, controls the "purse strings" of the School. Moreover, Renaissance negotiated other key provisions including but not limited to the actual rent based upon the Fair Market value of the leased premises; an acceptable interest rate and the initial term of the lease.

OMCA's Comments

The School representatives' response above is not fully responsive to the two part recommendation made by OMCA in 1.2 above regarding forgiving Incremental Rent at the end of each fiscal year if unable to be paid, and amending the lease agreement to remove unpaid Incremental Rent from being a condition of default and possible eviction. As previously mentioned, this Incremental Rent significantly increases in amount in future years and it serves as an additional source of revenue/profit for Red Apple for numerous services provided mostly during the planning and construction of the facility.

1.3 The School's Governing Board should request that the option be exercised at this time. Alternatively, the Facility Lease agreement should be amended to add a provision that the School would also be compensated should the City cancel Red Apple's Ground Lease Option.

Renaissance Charter School, Inc.'s (KGCHS's) Response

Renaissance appreciates MDSB's suggestion that Renaissance should request that the lease extension option be exercised at this time. MDSB audit correctly identifies a reasonable business alternative. Renaissance does not disagree with the observation, however believes that the exercise of the option is not a question of if but when. Before Renaissance obligates itself to a longer term, years 36-50, it will use its best judgment within its reasoned discretion after consultation with its legal counsel to determine the appropriate timing.

1.4 The definition provided for the term "Additional Rent" in the Facility Lease Agreement is vague and all encompassing. The School's Governing Board should consult with its legal counsel to determine whether this term should be more specifically defined in this lease.

OMCA's Comments

There was no response from the representatives of Renaissance Charter School, Inc. (KGCHS) specific to this recommendation.

2. Incorrect Ground Lease Payments to City of Homestead

Prior to the issuance of bonds, the construction of the facilities, and the contracting of the facility lease from Red Apple to Renaissance for the KGCHS facility, Red Apple contracted with the City of Homestead on December 15, 2010, as the lessee in a 35 year ground lease (the Ground Lease) for the development, construction and operation of a new charter high school in Homestead. The annual rent payable to the City under this ground lease ranges from \$60,000 in the first year to approximately \$145,000 in the thirty-fifth year. The lease contains an option for the lessee to extend the term an additional fifteen years.

It is not clear to us why the ground lease was contracted between the City of Homestead and the for-profit Red Apple Development, LLC, rather than directly between the City and the nonprofit Renaissance Charter School, Inc. The latter had been the arrangement in an earlier lease of a nearby parcel of land between the City and Renaissance, contracted in April 2010, for \$1 per year.

(Also see **APPENDIX A**⁶ for intent of new proposed ownership of high school property)

We found that rather than Red Apple making the Ground Lease payments to the City of Homestead as described in Section 2.8 of the Ground Lease, said payments are instead being made to the City by the School from the School's operating account. Based on the Ground Lease rent schedule, copies of sampled cancelled checks, and correspondence with the School's management company, the School has paid the City \$293,500 through June 30, 2015, on behalf of Red Apple.

The June 2011 Facility Lease Agreement between Red Apple at Homestead High School, LLC and Renaissance Charter School, Inc. describes three components of rent payable from the School, as described earlier in this report in finding 1 (Base Rent, Additional Rent and Incremental Rent). The facility lease does not require the School to pay the City for Red Apple's Ground Lease liability.

Recommendation

2.1 The School's Governing Board and contracted management company should enforce Red Apple's reimbursement to the School of monies that were incorrectly paid from the School's operating account to the City of Homestead for Red Apple's Ground Lease liability. Prospectively, the Ground Lease rents should be rightfully paid to the

⁶ **APPENDIX A** is a letter dated April 23, 2015. It is a proposal by Red Apple Development, LLC to the City of Homestead requesting their intent to initiate discussions regarding the transfer of ownership of the high school property from the City of Homestead to Red Apple Development, LLC via a land swap. This letter was discovered as a result of our review of public records available at the City of Homestead.

City by Red Apple, not the School. The School's Governing Board and its contracted management company should strengthen their governance oversight and management controls to ensure that the School's funds will not be incorrectly spent for the benefit of the management company's affiliate.

Renaissance Charter School, Inc.'s (KGCHS's) Response

It was originally contemplated that the ground lease payments would be passed thru to the School. However, Renaissance is coordinating with its landlord for an appropriate credit adjustment.

3. Management Agreement

Charter Schools USA at Renaissance High School of South Dade, LLC (CSUSA), was contracted as the management company by Renaissance Charter School, Inc./Keys Gate Charter High School to provide comprehensive services for the administration and operation of the School. These services include implementation of the educational program, management of all personnel,⁷ accounting and purchasing functions, operation of food service as required by the Charter, and “any and all other functions necessary or expedient for the administration of the School”.

The current management agreement was executed on June 1, 2011, with Mr. Ken Haiko signing as President of Renaissance Charter School, Inc., and Mr. Jonathan Hage signing as President of CSUSA.

a. Public Discussion of Management Agreement

Governing Board meeting minutes provided by the School’s representatives lack any mention of this management agreement and lack any evidence of the Governing Board’s contemplation, discussion or approval of the agreement’s various terms, fees and other provisions.

When we presented our concerns to the School’s representatives about the lack of evidence of discussion in the minutes, they indicated to us that the proposed agreement’s various terms, fees and other provisions had, in fact, been thoroughly considered and discussed by the Board. They suggested that the issue at hand was a matter of documentation, and agreed that the Governing Board meeting minutes could be more thorough and better documented.

Without contemporaneous documentation or other evidence being provided, such as sufficiently detailed meeting minutes or audio recordings, we cannot confirm that the School’s Governing Board publicly contemplated and discussed the management agreement’s various terms, fees and other provisions prior to entering into the contract.

b. Term and Fees of Management Agreement

The Agreement’s term is equal to the greater of five (5) years or the term of the Charter, provided the initial term of the Agreement does not exceed fifteen (15) years from the commencement date. The Agreement “shall automatically renew for additional five (5) year periods on the day following the expiration date (each a new Commencement Date) and shall expire five (5) years from such new Commencement Date (each a new

⁷ The management company is the employer of all school employees, including the administrators. Hiring and firing of employees is also vested with the management company, and not the School’s Governing Board.

Expiration Date) unless either party hereto delivers a written notice of termination to the other at least twelve (12) months prior to the then current Expiration Date.”

The annual management fee payable in the Agreement ranges from \$87,178 in 2012, to \$2.1 million in 2026, and totals \$22.2 million over 15 years. The Agreement stipulates that to the extent any fee is unpaid at the end of any past and future fiscal year, the unpaid fee shall be deferred and due when the school has available net operating revenue. The management fee paid by the School to CSUSA in FY 2013-2014 was \$527,386.

Representatives of the School and CSUSA indicated that it is the management company’s practice to forgive the management fee if the School is unable to pay. We found that in the first three years of the current management contract, CSUSA forgave management fees as follows:

Fiscal Year	Management Fee Per Contract	Management Fee Actually Paid	Amount Forgiven
2011-12	\$87,178	\$30,000	\$57,178
2012-13	\$155,601	-0-	\$155,601
2013-14	\$527,386	\$527,386	-0-

Recommendations

3.1 In order to demonstrate compliance with Florida Statutes, and provide evidence it is the independent driving force in the School’s decision making, the Governing Board should have and document robust public contemplation and discussion of a proposed management agreement’s various terms, fees and other provisions prior to entering into a management contract of this magnitude and complex nature.

Renaissance Charter School, Inc.’s (KGCHS’s) Response

MDSB audit suggests the Renaissance Meeting Minutes need to provide greater detail. While the meeting minutes could have been more robust; the lease, management agreement, and other documents were indeed subject to robust public contemplation, discussion and review, as well as extensive analysis, appropriate scrutiny and negotiation.

OMCA’s Comments

The School’s representatives agree with our recommendation that the meeting minutes could be more robust. Again, no evidence was provided to us to support the School’s assertions and claims that the management agreement was thoroughly and appropriately vetted in a properly noticed public Governing Board meeting.

3.2 Notwithstanding evidence provided that CSUSA partly or fully forgave its management fee in two of the first three years of the current management agreement, the School's Governing Board should request of CSUSA that said stated practice of forgiveness be contractually formalized through an amended Management Agreement.

Renaissance Charter School, Inc.'s (KGCHS's) Response

While the management agreement addresses a fee for CSUSA, such fee is subordinated to the Operational Expenses of the School. The MDSB audit, indeed, recognizes this operation in finding 3 and it also recognizes the practice between Renaissance and CSUSA, wherein CSUSA waives fees where the School is unable to pay....

The charter holder is well protected as Renaissance receives extensive monthly financial and academic reporting, provides oversight and control particularly over the budget, has the fees contractually subordinated to School Operational Expenses.....

4. No Requirement for Dual Authorized Signatures for Checks Issued in an Amount Greater Than a Specified Limit

The business signature card for the Keys Gate Charter High School Operating Account, housed at JPMorgan Chase Bank, N.A., indicates Mr. Jonathan K. Hage, President of CSUSA, as the account's sole authorized signer. There is no requirement for a second signature regardless of the amount of a check issuance.

Section 4.G. of the School's charter contract with the District dated May 11, 2011, addresses financial management of the school and references internal controls that would be in place pursuant to the School's application. Section 18.1 of the application reads, in part, "the following individuals are authorized signers on all accounts: Operating Account-Board Chairperson and CSUSA Senior Management."

Also, standard cash disbursement controls for not-for-profit entities usually require two signers on checks above a specified limit. When we discussed with the School's representatives our concerns with the lack of dual signature requirements on operating account check disbursements, they provided evidence of various compensating controls, including a robust purchase order system and approval process, budget line items, segregation of duties and "Positive Pay" fraud protection.

Recommendation

4.1 To enhance controls over cash disbursements, and better involve the Governing Board with oversight of the School's operations, the School's Governing Board should require two signatures on checks issued for amounts above a specified limit, wherein the second signature would be that of a Governing Board member.

Renaissance Charter School, Inc.'s (KGCHS's) Response

MDSB's suggestion would further enhance internal controls and the Board has agreed to consider the matter and approve the dual signature requirement.

5. Disclosures in Audited Financial Statements

Governmental Accounting Standards Board (GASB) statements 56 and 62 and Financial Accounting Standards Board (FASB) codification 850-10 require an entity to disclose and describe related party transactions in its audited financial statements.

Examples provided of related parties include:

- Affiliates of the entity,
- Management of the entity and members of their immediate families,
- Other parties that can significantly influence the management or operating policies of the transacting parties or that have an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests.

In the case of Keys Gate Charter High School, the School's key manager (the President and CEO of CSUSA) is also the owner of Red Apple Development, LLC and Connex 12, LLC. Both Red Apple and Connex 12, LLC are contracted or otherwise engaged in business transactions by and with KGCHS. The School and Red Apple are also both parties to a bond issuance and co-borrowers on a \$23.5 million loan.

Recommendation

5.1 While we acknowledge that the notes to the audited financial statements are substantially descriptive overall, the School's certified financial statements should include further disclosures specific to Related Parties. The notes to the audited financial statements should disclose that Red Apple Development, LLC and Connex 12, LLC are owned by the President and CEO of Charter Schools USA, the School's management company.

Renaissance Charter School, Inc.'s (KGCHS's) Response

Renaissance agrees that related party transactions are required to be disclosed in the footnotes to the financial statements. KGCHS does disclose transactions with Keys Gate Charter School in the footnotes to the financial statements.

Charter Schools USA, Inc. Red Apple Development, LLC and Connex 12, LLC are vendors hired by Renaissance. The financial statements footnotes provide a clear description of the transactions between these vendors and the School during the fiscal year; however, these parties are not related parties to KGCHS.

We understand that the accounting pronouncements define related parties to include “management of the entity and members of their immediate families,” however; the pronouncements further define management as:

“Persons who are responsible for achieving the objectives of the enterprise and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management normally includes members of the board of directors, chief executive officer, chief operating officer, vice presidents in charge of principal business functions and other persons who perform similar policy making functions.”

Renaissance is the charter holder and has authority to establish policies. We have not delegated policy making decisions to our vendor, Charter Schools USA. We allow the vendor to manage many of the day to day functions since we are a volunteer board of directors; however, Renaissance retains exclusive and ultimate authority. CSUSA may only act within the policies and budget approved by Renaissance.

OMCA’s Comments

We strongly disagree with the argument that KGCHS (Renaissance) is not a related party to Red Apple (and Connex 12). The President of CSUSA serves as both management of KGCHS and owner of Red Apple (and Connex 12). In these dual roles, he could “significantly influence the management and operating policies” of KGCHS such that dealings between the entities could favor Red Apple and Connex 12. Therefore, we maintain that transactions between the School and said entities (Red Apple and Connex 12) are not “arms-length” and must be disclosed, accordingly, in the notes to the audited financial statements.

6. Financial Operations of School Appear to Differ from Various Contracts and Agreements

As detailed throughout this report, Renaissance Charter School, Inc. (KGCHS) is a party to, or the subject of, many contracts and legal agreements including a Ground Lease agreement with the City of Homestead, a Mortgage and Loan Agreement with Florida Development Finance Corporation (FDFC), a sub-lease agreement with a Red Apple entity, a management agreement with Charter Schools USA, and an Indenture of Trust between FDFC and Regions Bank.

Many of the contracts involving Renaissance Charter School, Inc. (Keys Gate Charter High School) appear as not being executed in accordance with the contractual language, terms, and arrangements within the contracts themselves. Examples of apparent non-compliance include:

- The 6/1/2011 Indenture of Trust between Regions Bank (trustee) and FDFC (bond issuer and mortgagor) indicates that essentially all revenue monies of the School are to be sent to the trustee, who in turn will make payments to FDFC, Red Apple, Charter Schools USA, the School, etc. However, only two payments are being remitted regularly to the trustee: Base Rent payments and Repair and Replacement Reserve Fund amounts.
- The 6/30/2011 Lease Agreement between Red Apple at Homestead High School, LLC and Renaissance Charter School, Inc. is very specific in requiring that the School (tenant) pay Base Rent, Additional Rent, and Incremental Rent directly to the Trustee (and the Trustee will later disburse to respective parties). However, the School, through its management company, appears to be remitting only Base Rent and Repair and Replacement Reserve Fund monies to the Trustee, and instead making payments directly to all other parties.
- The 6/1/2011 Management Agreement between Charter Schools, USA (CSUSA) and Renaissance Charter School, Inc. (KGCHS) states that “CSUSA acknowledges and agrees that the Fee shall be payable from amounts deposited with the Trustee as set forth in Section 3.3 of the Indenture.” However, the CSUSA management fee is being paid via checks issued directly from the School’s operating account.
- The 8/1/2010 Use Agreement between Homestead Charter Foundation, Inc. (Keys Gate Charter School, KGCS K-8) and Renaissance Charter School, Inc. (KGCHS), resulting from the 7th and 8th grade students’ use of the high school facility, details two different payments by KGCS K-8 directly to the trustee. Instead of the contractual arrangement, KGCS K-8 is directly reimbursing the high school and the high school is paying the entire debt service obligation through its base rent payments to the trustee.

We presented our concerns about apparent non-conformance with various contracts to the School's representatives. They indicated that the subject bonds issued involve Renaissance schools operating in multiple Florida school districts. Due to the Miami-Dade School Board's policy of paying FTE funds to the sponsored charter school only (and not to another entity such as a trustee), they had to work in coordination with the Trustee to ensure the effective flow of funds to the various parties.

Recommendation

6.1 The School's Governing Board should consult with its legal counsel and contracted management company and evaluate the legal contracts, agreements and documents involving the School and its affiliates to ensure the compliance between contractual agreements and the manner in which they are being executed. Contracts or their execution should be revised accordingly.

Renaissance Charter School, Inc.'s (KGCHS's) Response

We do not believe that the recommendations in 6.1 are necessary. The private parties to the listed agreements have accepted the rescission of the contract performance for payment process only, or a substitution for the performance as adequate (accord and satisfaction), primarily with the charter facilitating payments instead of the Trustee, as being in substantial compliance, and thereby waiving the actual payment terms outlined in the agreements.

There is no demand from any of the private parties requiring strict compliance with the terms of the contract for adherence to the payment process. Indeed the private parties have acquiesced to the process required by MDSB. The parties are otherwise committed and are in compliance with the remaining terms, specifically the amounts due and owing pursuant to the agreements.

OMCA's Comments

The impetus of our finding and recommendation was to bring to the attention of the Governing Board and our report readers, that in multiple instances, the execution of payment and flow of funds does not comport with the provisions of the various contracts and indenture. The School's response indicates that "the private parties to the listed agreements have accepted the rescission of the contract performance for payment process only...." However, the OMCA has not been provided any documentation to support this claim.

Also, the School's full response seems to inappropriately cast blame on the District for adopting a policy, consistent with State Statute, to pay public funds only to an account owned by the charter school. We would suggest that it is incumbent on the School and its management to take into consideration applicable State and local laws, policies and procedures prior to executing various contracts and agreements for the financing and construction of facilities.



STEPHANIE TOOTHAKER
(954) 765-2905
email: stj@trippscott.com

April 23, 2015

Via Email: ggretsas@cityofhomestead.com

Mr. George Gretsas, City Manager
City of Homestead
650 NE 22 Terrace
Homestead, FL 33033

***Re: Red Apple Development, LLC / Proposed Transfer of "Oasis parcel" in
Exchange for Reduction of High School Ground Lease Payment Amount***

Dear George:

This firm represents Red Apple Development, LLC, ("Red Apple"), the owner of vacant real property in the City of Homestead identified by folio number 10-7916-010-0040 and commonly referred to as the "Azores at Oasis" or the "Oasis parcel." In 2008, Red Apple purchased the Oasis parcel in order to develop a charter school facility. However, at the urging of the City of Homestead, Red Apple in 2010 instead entered into that certain "High School Ground Lease" with the City for that purpose, utilizing previously underutilized land on the sports stadium property owned by the City. A copy of the High School Ground Lease is enclosed with this letter. Since 2010, the property leased to Red Apple has been improved with a highly successful school facility and the Oasis parcel remains vacant.

Red Apple has been advised that the City of Homestead is interested in using the Oasis parcel for park and recreation space. Red Apple values its relationship with the City of Homestead in their shared goal of improving the quality of life for children in the community, and therefore Red Apple is interested in transferring the Oasis parcel to the City of Homestead for development of a public park. In exchange for Red Apple transferring the Oasis parcel to the City, Red Apple proposes that the City transfer fee simple ownership of the property currently leased by the City to Red Apple pursuant to the High School Ground Lease. As you know, municipalities are authorized by law to enter into land swaps for valid public purposes such as acquiring land for a public park.

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APPENDIX A (Page 2 of 2)

Letter to City Manager George Gretsas
April 23, 2015

Please accept this letter as a request from Red Apple to initiate discussions with the City of Homestead regarding the matters referenced herein. If I can provide any additional information to facilitate this discussion, please do not hesitate to contact me.

Warm Regards,



STEPHANIE J. TOOTHAKER
For The Firm

SJT/msh

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APPENDIX B

(Pages 32 – 41)

Keys Gate Charter High School Audit Response



9-21-15

Mr. José F. Montes de Oca, CPA, Chief Auditor
Office of Management and Compliance Audits
Miami-Dade County Public Schools
1450 N.E. 2 Avenue, Suite 415
Miami, Florida 33132
josemontesdeoca@dadeschools.net

Re: **Keys Gate Charter High School Audit Response**

Dear Mr. Montes de Oca:

On behalf of Renaissance Charter School, Inc., (Renaissance), a Florida not-for Profit Corporation, an organization described in Section 501(c)(3) of the Internal Revenue Code and the charter holder of Keys Gate High School (KGCHS or School), we acknowledge receipt of the Miami Dade School Board (MDSB) audit of KGCHS. We have reviewed the findings contained in the audit and provide the below response.

BACKGROUND

KGCHS is a highly performing school in a first class facility serving a majority minority student population. Located in Homestead, Florida, KGCHS opened in 2010, serving grades 9-12 and, at facility capacity, 1800 students. KGCHS is part of a K-12 system with Keys Gate Charter School which serves grades K-8. The current enrollment at the KGCHS facility is 1800¹ and has a wait list of 944². KGCHS is accredited by AdvancED/SACS. Its current School grade is a "C". The demographic of the student body of the school is as follows:

KGCHS Student Demographic	
Hispanic	64%
Black	20%
White	15%
Other	1%

¹ Includes 620 middle school students from KGCS by use agreement.

² Wait list includes both KGCS and KGCHS.

The demographic of the student population also includes over 70% who are eligible for free and reduced lunch program. Clearly, KGCHS is an affirmative choice for students and families, most from the Homestead area and receives over 90% satisfaction rating from parents.

Students enjoy a full program of academic offerings, including the internationally-recognized Cambridge/AICE program in affiliation with Cambridge University in England. Students are enriched with a complete set of athletic, music, and student activities. The School provides a hands-on approach to technology and fully equipped science and other educational programs. The furnishings, fixtures and equipment exceed that of most schools and the entire facility is expertly maintained. Most importantly, the 110+ teachers and staff are there to create a rigorous and caring learning environment.

THE FACILITY

The school facility is a 3 story educational facility totaling 144,929 square feet. See the aerials provided herein as well as photos of the interior of the facility. It includes classrooms, cafeteria, gymnasium, band room and administrative offices. According to an MAI appraisal effective January 1, 2012, the value of the school then was \$24,000,000*. The cost per student station for this facility was a maximum of \$13,333. This cost per student station is at least 50% less than the cost per student station of a typical traditional public high school constructed in South Florida.

	KGCHS	x H.S.	y H.S.
Student Capacity	1800	1750	1600
Appraisal/Cost	\$ 24,000,000*	\$ 44,000,000	\$ 51,465,000
Student Station	\$ 13,333	\$ 25,142	\$ 32,165

Unlike the traditional public school construction where the funds come from public tax dollars, the funds utilized for the development and construction of KGCHS were private monies generated from the Educational Facilities Revenue Bonds issued by the Florida Development Finance Corporation.

FINANCIAL COMPLIANCE

KGCHS has timely complied with all reporting requirements pursuant to Florida Statute and the Charter Agreement with MDSB. As part of that obligation an Independent Audit is filed yearly. The Independent Audits filed for KGCHS all report the financial condition of the School as sufficient and fully compliant. The audits as reported confirms there are no deficiencies in the

internal controls and confirms that the School was not subject to Section 218.503(1), Florida Statutes nor Section 10.855, Rules of the Auditor General. The School's operating budget and financials as reported by the Independent Auditor also confirm appropriate use of all public monies and such expenditures are consistent with the mission of Renaissance, KGCHS and MDSB.

FINANCIAL STRUCTURE

The Educational Facilities Revenue Bond Structure is simply a funding method to drive private investment monies in to Florida in order to develop and construct KGCHS. This manner of funding does not obligate or encumber public monies. Therefore, we object to the scope of the audit extending beyond the lease of the facility. The scope of the MDSB audit authority is limited to the yearly operational use of public monies. With our objection duly noted; we have remained fully cooperative with MDSB with regard to its inquiry. Please note that our cooperativeness, disclosure of documents or explanations of the Revenue Bond structure should not be construed as a waiver and we reserve all rights and objections thereto.

MDSB audit suggests the Renaissance Meeting Minutes need to provide greater detail. While the meeting minutes could have been more robust; the lease, management agreement, and other documents were indeed subject to robust public contemplation, discussion and review, as well as extensive analysis, appropriate scrutiny and negotiation.

Renaissance enjoyed the benefit of independent legal counsel from its own Board counsel, Levi Williams, Esq. In addition to Mr. Williams, Renaissance retained the national law firm Akerman Senterfitt for purposes of the Revenue Bond transaction which included the lease and management agreements. Renaissance was thoroughly advised by counsel throughout the transaction. In keeping with its mission and purpose to expand educational opportunity, Renaissance ultimately made a knowing, independent decision to proceed. Moreover, counsel for Renaissance, Akerman Senterfitt, as part of the transaction issued a significant legal opinion requiring the sanctity of the transaction.

There is much discussion devoted in the MDSB audit regarding rent (and components of rent). As stated above, this was a heavily negotiated issue. The rent started as one component; however, the School wanted greater protection of its operations where actual School Operating Expenses remained the priority. Renaissance wanted greater certainty for the School, its Educational Model and student experience. A portion of the rent was separated into incremental rent. This allowed this portion of the rent to be treated differently. The lease and other transaction documents subordinated incremental rent to the School's Operating Expenses. With the subordination feature and Renaissance's control of the School's Operating Expenses through the budget process, Renaissance, and Renaissance alone, controls the "purse strings" of the School. Moreover, Renaissance negotiated other key provisions including but not limited to the actual rent based upon the Fair Market value of the leased premises; an acceptable interest rate and the initial term of the lease.

Renaissance appreciates MDSB's suggestion that Renaissance should request that the lease extension option be exercised at this time. MDSB audit correctly identifies a reasonable

business alternative. Renaissance does not disagree with the observation, however believes that the exercise of the option is not a question of if but when. Before Renaissance obligates itself to a longer term, years 36-50, it will use its best judgment within its reasoned discretion after consultation with its legal counsel to determine the appropriate timing.

GROUND LEASE PAYMENTS

It was originally contemplated that the ground lease payments would be passed thru to the School. However, Renaissance is coordinating with its landlord for an appropriate credit adjustment.

SCHOOL OPERATIONS

Renaissance, as the charter holder, exercises authority over the budget and expenditures of the School. Renaissance is provided with detailed monthly financial reports which include but are not limited to Board directed items, Student Enrollment, FTE Revenue, Budget Variances, Fund Balances v. Budget and Changes in Fund Balances as well as an executive narrative. Renaissance strictly holds Charter School USA (CSUSA) accountable for the financial reporting and provides explicate direction to CSUSA regarding operational expenditures of the School. The management agreement not only requires strict compliance by the Management Company with Renaissance directives, it provides the right of Renaissance to terminate CSUSA in the event of a material breach (among other reasons). While the management agreement addresses a fee for CSUSA, such fee is subordinated to the Operational Expenses of the School. The MDSB audit, indeed, recognizes this operation in finding 3 and it also recognizes the practice between Renaissance and CSUSA, wherein CSUSA waives fees where the School is unable to pay.

The actual management fee is 5.4% as reflected below.

KGCHS			
Management Fees			
	Actual		
	Management Fee	% of Revenue	Total School Revenue
FY11	30,000	2.0%	1,482,757
FY12	30,000	0.8%	3,571,674
FY13	-	0.0%	5,484,569
FY14	527,386	6.2%	8,461,315
FY15	<u>927,386</u>	10.2%	<u>9,135,870</u>
Cumulative	<u>1,514,772</u>	5.4%	<u>28,136,185</u>

The charter holder is well protected as Renaissance receives extensive monthly financial and academic reporting, provides oversight and control particularly over the budget, has the fees contractually subordinated to School Operational Expenses and where the actual fee is significantly low.

NO REQUIREMENT FOR DUAL AUTHORIZATION SIGNATURES FOR CHECKS
ISSUED IN AN AMOUNT GRATER THAN A SPECIFIED LIMIT.

As noted in the findings, we have provided MDSB with copious evidence of various compensating controls, a robust purchase order system and approval process, Board approved budget line-items, segregation of duties and "Positive Pay" fraud protection. These processes are in place for all checks issued, regardless of amount. As all checks in today's market place are auto-signed, including those at the MDSB.

MDSB's suggestion would further enhance internal controls and the Board has agreed to consider the matter and approve the dual signature requirement.

DISCLOSURES IN AUDITED FINANCIAL STATEMENTS

Renaissance agrees that related party transactions are required to be disclosed in the footnotes to the financial statements. KGCHS does disclose transactions with Keys Gate Charter School in the footnotes to the financial statements.

Charter Schools USA, Inc., Red Apple Development, LLC and Connex 12, LLC are vendors hired by Renaissance. The financial statements footnotes provide a clear description of the transactions between these vendors and the School during the fiscal year; however, these parties are not related parties to KGCHS.

We understand that the accounting pronouncements define related parties to include "management of the entity and members of their immediate families," however; the pronouncements further define management as:

"Persons who are responsible for achieving the objectives of the enterprise and who have the authority to establish policies and make decisions by which those objectives are to be pursued. Management normally includes members of the board of directors, chief executive officer, chief operating officer, vice-presidents in charge of principal business functions and other persons who perform similar policy making functions."

Renaissance is the charter holder and has authority to establish policies. We have not delegated policy making decisions to our vendor, Charter Schools USA. We allow the vendor to manage many of the day to day functions since we are a volunteer board of directors; however, Renaissance retains exclusive and ultimate authority. CSUSA may only act within the policies and budget approved by Renaissance.

We are very mindful of our responsibility to maintain an arm's length relationship with our vendors to preserve our tax-exempt status. The independent nature of our Board is reviewed frequently by various parties in connection with our tax-exempt finance offerings. While we appreciate the functions performed by Charter Schools USA, Inc., we are not related parties and therefore have no responsibility to further disclose their related party relationships in the footnotes to our annual financial statements.

FINANCIAL OPERATIONS OF SCHOOL APPEAR TO DIFFER FROM VARIOUS CONTRACTS AND AGREEMENTS

KGCHS is operated by Renaissance, a not for profit entity, which is run and managed by its volunteer Board of Directors pursuant to F.S. §1002.33 *et seq.* and §1002.34 *et seq.*

The alleged change in payment between what is in each of the listed contractual items and how it is done in practice is as a result of a compromise with the Sponsor, MDSB. The contracts, as agreed to by and between the private parties, would allow for payment of all funds from MDSB to be deposited with the Trustee which would then ensure that all payments are made pursuant to the terms of each of the agreements. Unfortunately, MDSB has interpreted the following FEFP, Florida Education Finance Program, payment statement as requiring ALL funds to be DIRECTLY to the charterholder, regardless of other agreements:

The sponsor shall calculate and submit twelve (12 monthly payments to the charter school. The first payment will be made by July 31st; and the other payments will be made by the fifteenth (15th) of each month beginning with August 15th.

While we did not necessarily agree with the MDSB absolute and exclusive interpretation of the FEFP payment statement, we capitulated in good-faith. As such, MDSB cannot now use that settlement action as a *sword-and-a-shield*, essentially not using it to allege some form of discrepancy when MDSB is responsible for the actual non-performance or frustration of performance as to process of payment only and not actual payments made.

We do not believe that the recommendations in 6.1 are necessary. The private parties to the listed agreements have accepted the rescission of the contract performance for payment process only, or a substitution for the performance as adequate (accord and satisfaction), primarily with the charter facilitating payments instead of the Trustee, as being in substantial compliance, and thereby waiving the actual payment terms outlined in the agreements.

There is no demand from any of the private parties requiring strict compliance with the terms of the contract for adherence to the payment process. Indeed the private parties have acquiesced to the process required by MDSB. The parties are otherwise committed and are in compliance with the remaining terms, specifically the amounts due and owing pursuant to the agreements.

We strongly recommend that MDSB amend its policies and procedures to accommodate the market requirements for future private funding for charter school development by allowing payments under specific accountability terms to a financial trustee.

We have had a good working relationship with MDSB and look forward to a continuation of that working relationship for the benefit of all students we serve. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Kenneth Haiko". The signature is written in a cursive style.

Kenneth Haiko
Chairman,
Renaissance Charter School Board, Inc.

cc: Levi Williams, Esq.
Jon Hage
Richard Garcia
Bill Benson
Edward Pozzuoli, Esq.



Anti-Discrimination Policy

Federal and State Laws

The School Board of Miami-Dade County, Florida adheres to a policy of nondiscrimination in employment and educational programs/activities and strives affirmatively to provide equal opportunity for all as required by:

Title VI of the Civil Rights Act of 1964 - prohibits discrimination on the basis of race, color, religion, or national origin.

Title VII of the Civil Rights Act of 1964 as amended - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

Title IX of the Education Amendments of 1972 - prohibits discrimination on the basis of gender.

Age Discrimination in Employment Act of 1967 (ADEA) as amended - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

The Equal Pay Act of 1963 as amended - prohibits gender discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

Section 504 of the Rehabilitation Act of 1973 - prohibits discrimination against the disabled.

Americans with Disabilities Act of 1990 (ADA) - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

The Family and Medical Leave Act of 1993 (FMLA) - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

The Pregnancy Discrimination Act of 1978 - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

Florida Educational Equity Act (FEEA) - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

Florida Civil Rights Act of 1992 - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA) - prohibits discrimination against employees or applicants because of genetic information.

Boy Scouts of America Equal Access Act of 2002 – no public school shall deny equal access to, or a fair opportunity for groups to meet on school premises or in school facilities before or after school hours, or discriminate against any group officially affiliated with Boy Scouts of America or any other youth or community group listed in Title 36 (as a patriotic society).

Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 295.07 (Florida Statutes), which stipulate categorical preferences for employment.

In Addition:

School Board Policies 1362, 3362, 4362, and 5517 - Prohibit harassment and/or discrimination against students, employees, or applicants on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. Retaliation for engaging in a protected activity is also prohibited.



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