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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

**FORM 10-Q**

**Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended December 31, 2011

OR

**Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Commission File Number 001-07172

**BRT REALTY TRUST**

(Exact name of Registrant as specified in its charter)

**Massachusetts**  
(State or other jurisdiction of  
incorporation or organization)

**13-2755856**  
(I.R.S. Employer  
Identification No.)

**60 Cutter Mill Road, Great Neck, NY**  
(Address of principal executive offices)

**11021**  
(Zip Code)

**516-466-3100**

(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "small reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of stock, as of the latest practicable date.

14,076,712 Shares of Beneficial Interest,  
\$3 par value, outstanding on February 5, 2012

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**BRT REALTY TRUST AND SUBSIDIARIES**  
**Table of Contents**

	<u>Page No.</u>
<a href="#">Part I - Financial Information</a>	
<a href="#">Item 1. Financial Statements</a>	
<a href="#">Consolidated Balance Sheets — December 31, 2011 and September 30, 2011</a>	1
<a href="#">Consolidated Statements of Operations — Three months ended December 31, 2011 and 2010</a>	2
<a href="#">Consolidated Statement of Shareholders' Equity — Three months ended December 31, 2011</a>	3
<a href="#">Consolidated Statements of Cash Flows — Three months ended December 31, 2011 and 2010</a>	4
<a href="#">Notes to Consolidated Financial Statements</a>	5
<a href="#">Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</a>	18
<a href="#">Item 3. Quantitative and Qualitative Disclosures About Market Risks</a>	22
<a href="#">Item 4. Controls and Procedures</a>	22
<a href="#">Part II — Other Information</a>	
<a href="#">Item 2. Unregistered sales of equity securities and use of proceeds</a>	23
<a href="#">Item 5. Other information</a>	23
<a href="#">Item 6. Exhibits</a>	27
<a href="#">Signatures</a>	
Ex 10.1	
Ex. 10.2	
Ex. 10.3	
Ex. 10.4	
Ex 31.1	
Ex 31.2	
Ex 32.1	
Ex 32.2	
Ex 101	

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**Part 1 - FINANCIAL INFORMATION**  
**Item 1. Financial Statements**

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
**(Dollars in thousands, except share data)**

	December 31, 2011 (Unaudited)	September 30, 2011
<b>ASSETS</b>		
Real estate loans, all earning interest	\$ 52,679	\$ 67,266
Deferred fee income	(880)	(576)
	<u>51,799</u>	<u>66,690</u>
Real estate loan held for sale	—	8,446
Real estate properties net of accumulated depreciation of \$2,689 and \$2,511	59,875	59,277
Investment in unconsolidated ventures	1,014	4,247
Cash and cash equivalents	76,589	44,025
Available-for-sale securities at market	3,601	2,766
Other assets	5,424	5,561
Total Assets	<u>\$ 198,302</u>	<u>\$ 191,012</u>
<b>LIABILITIES AND EQUITY</b>		
Liabilities:		
Junior subordinated notes	\$ 37,400	\$ 37,400
Mortgages payable	18,629	14,417
Accounts payable and accrued liabilities	1,164	948
Deposits payable	2,099	2,518
Total Liabilities	<u>59,292</u>	<u>55,283</u>
Commitments and contingencies	—	—
Equity:		
BRT Realty Trust shareholders' equity:		
Preferred shares, \$1 par value:		
Authorized 10,000 shares, none issued	—	—
Shares of beneficial interest, \$3 par value:		
Authorized number of shares, unlimited, 13,941 and 14,994 issued	41,822	44,981
Additional paid-in capital	167,245	171,889
Accumulated other comprehensive income—net unrealized gain on available-for-sale securities	655	278
Accumulated deficit	(73,141)	(77,015)
Cost of 492 and 1,422 treasury shares of beneficial interest	(3,824)	(11,070)
Total BRT Realty Trust shareholders' equity	<u>132,757</u>	<u>129,063</u>
Non-controlling interests	6,253	6,666
Total Equity	<u>139,010</u>	<u>135,729</u>
Total Liabilities and Equity	<u>\$ 198,302</u>	<u>\$ 191,012</u>

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(Unaudited)**  
**(Dollars in thousands, except share data)**

	Three Months Ended December 31,	
	2011	2010
<b>Revenues:</b>		
Interest on real estate loans	\$ 1,910	\$ 1,156
Loan fee income	342	243
Rental revenue from real estate properties	768	854
Recovery of previously provided allowances	7	—
Other, primarily investment income	127	199
<b>Total revenues</b>	<b>3,154</b>	<b>2,452</b>
<b>Expenses:</b>		
Interest on borrowed funds	467	657
Advisor's fees, related party	171	221
Foreclosure related professional fees	—	190
General and administrative—including \$279 and \$202 to related party	1,674	1,431
Operating expenses relating to real estate properties	786	916
Amortization and depreciation	184	188
<b>Total expenses</b>	<b>3,282</b>	<b>3,603</b>
Total revenues less total expenses	(128)	(1,151)
Equity in (loss) earnings of unconsolidated ventures	(75)	49
(Loss) gain on sale of available-for-sale securities	(18)	421
Gain on sale of loan	3,192	—
<b>Income (loss) from continuing operations</b>	<b>2,971</b>	<b>(681)</b>
<b>Discontinued operations:</b>		
Gain on sale of real estate assets	490	—
<b>Net income (loss)</b>	<b>3,461</b>	<b>(681)</b>
<b>Plus: net loss attributable to non controlling interests</b>	<b>413</b>	<b>173</b>
<b>Net income (loss) attributable to common shareholders</b>	<b>\$ 3,874</b>	<b>\$ (508)</b>
<b>Basic and diluted per share amounts attributable to common shareholders:</b>		
Income (loss) from continuing operations	\$ .24	\$ (.04)
Discontinued operations	.04	—
<b>Basic and diluted income (loss) per share</b>	<b>\$ .28</b>	<b>\$ (.04)</b>
<b>Amounts attributable to BRT Realty Trust:</b>		
Income (loss) from continuing operations	\$ 3,384	\$ (508)
Discontinued operations	490	—
<b>Net income (loss)</b>	<b>\$ 3,874</b>	<b>\$ (508)</b>
<b>Weighted average number of common shares outstanding:</b>		
Basic and diluted	<b>13,982,164</b>	<b>13,977,706</b>

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF EQUITY**  
**(Unaudited)**  
**(Dollars in thousands, except share data)**

	Shares of Beneficial Interest	Additional Paid-In Capital	Accumulated Other Comprehensive Income	(Accumulated Deficit)	Treasury Shares	Non- Controlling Interest	Total
Balances, September 30, 2011	\$ 44,981	\$ 171,889	\$ 278	\$ (77,015)	\$ (11,070)	\$ 6,666	\$ 135,729
Compensation expense — restricted stock	—	210	—	—	—	—	210
Retirement of treasury shares (930,198 shares)	(2,790)	(4,456)	—	—	7,246	—	—
Shares repurchased 122,946 shares	(369)	(398)	—	—	—	—	(767)
Net income	—	—	—	3,874	—	(413)	3,461
Other comprehensive income - net unrealized gain on available-for-sale securities	—	—	377	—	—	—	377
Comprehensive income	—	—	—	—	—	—	3,838
Balances, December 31, 2011	<u>\$ 41,822</u>	<u>\$ 167,245</u>	<u>\$ 655</u>	<u>\$ (73,141)</u>	<u>\$ (3,824)</u>	<u>\$ 6,253</u>	<u>\$ 139,010</u>

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**  
**(Dollars in Thousands)**

	Three Months Ended December 31,	
	2011	2010
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ 3,461	\$ (681)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Recovery of previously provided allowances	(7)	—
Amortization and depreciation	264	237
Amortization of deferred fee income	(320)	(243)
Accretion of junior subordinated notes principal	—	150
Amortization of securities discount	—	(18)
Amortization of restricted stock	210	208
Gain on sale of real estate assets from discontinued operations	(490)	—
Loss (gain) on sale of available-for-sale securities	18	(421)
Gain on sale of loan	(3,192)	—
Equity in loss (earnings) of unconsolidated joint ventures	75	(49)
Distribution of earnings of unconsolidated joint ventures	123	45
Decrease (increase) in straight line rent	12	(32)
Increases and decreases from changes in other assets and liabilities:		
Decrease (increase) in interest and dividends receivable	243	(67)
Decrease in prepaid expenses	178	477
(Decrease) increase in accounts payable and accrued liabilities	(204)	224
Decrease in deferred costs	13	84
Increase in security deposits and other receivable	(15)	(99)
Other	(2)	(79)
Net cash provided by (used in) operating activities	<u>367</u>	<u>(264)</u>
<b>Cash flows from investing activities:</b>		
Collections from real estate loans	51,682	7,650
Additions to real estate loans	(25,457)	(28,263)
Proceeds from the sale of loans and loan participations	—	1,000
Loan loss recoveries	7	—
Net costs capitalized to real estate owned	(792)	(1,123)
Collection of loan fees	625	520
Proceeds from sale of real estate owned	507	53
Proceeds from sale of available-for-sale securities	556	640
Purchase of available for sale securities	(1,030)	(55)
Distributions of capital of unconsolidated joint ventures	3,035	—
Purchase of interest from minority partner	—	(713)
Net cash provided by (used in) investing activities	<u>29,133</u>	<u>(20,291)</u>
<b>Cash flows from financing activities:</b>		
Increase in mortgages payable	4,282	56
Mortgage principal payments	(70)	(66)
Increase in deferred borrowing costs	(381)	—
Capital contributions from non-controlling interests	—	349
Capital distribution to non-controlling interests	—	(52)
Repurchase of shares	(767)	(1,178)
Net cash provided by (used in) financing activities	<u>3,064</u>	<u>(891)</u>
Net increase (decrease) in cash and cash equivalents	32,564	(21,446)
Cash and cash equivalents at beginning of period	44,025	58,497
Cash and cash equivalents at end of period	<u>\$ 76,589</u>	<u>\$ 37,051</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid during the period for interest	<u>\$ 109</u>	<u>\$ 169</u>

See accompanying notes to consolidated financial statements.

**BRT REALTY TRUST AND SUBSIDIARIES**  
**Notes to Consolidated Financial Statements**  
**December 31, 2011**

**Note 1 — Organization and Background**

BRT Realty Trust is a business trust organized in Massachusetts. Our primary business is to originate and hold for investment senior mortgage loans secured by commercial and multi-family real estate property in the United States. This includes originating loans to persons purchasing their own or third party mortgage debt, at a discount to the principal amount thereof. Generally, in such transactions, we purchase the mortgage and our counterparty is obligated to repurchase such mortgage within a specified period. The loans we originate generally have relatively high yields and are short-term or bridge loans with a duration ranging from six months to one year. It is our policy to lend at a floating rate of interest based on a spread over the prime rate, with a stated minimum rate, though we originate fixed rate loans as circumstances dictate. We generally receive an origination fee for the loans we originate. We conduct our operations to qualify as a real estate investment trust, or REIT, for Federal income tax purposes.

We also participate as an equity investor in joint ventures which acquire multi-family residential or other real estate assets located throughout the United States, and purchase securities of other REITs.

**Note 2- Basis of Preparation**

The accompanying interim unaudited consolidated financial statements as of December 31, 2011 and for the three months ended December 31, 2011 and 2010 reflect all normal recurring adjustments which are, in the opinion of management, necessary for a fair presentation of the results for such interim periods. The results of operations for the three months ended December 31, 2011 are not necessarily indicative of the results for the full year. The balance sheet as of September 30, 2011 has been derived from the audited financial statements at that date but does not include all the information and footnotes required by accounting principles generally accepted in the United States for complete financial statements.

Certain items on the consolidated financial statements for the preceding period have been reclassified to conform with the current year's presentation.

The consolidated financial statements include the accounts and operations of BRT Realty Trust, its wholly owned subsidiaries, and its majority-owned or controlled real estate entities and its interests in variable interest entities in which it is the primary beneficiary. Material intercompany items and transactions have been eliminated. BRT Realty Trust and its subsidiaries are hereinafter referred to as "BRT" or the "Trust."

With respect to its unconsolidated joint ventures, as (i) the Trust is primarily the managing member but does not exercise substantial operating control over these entities or the Trust is not the managing member and (ii) such entities are not variable interest entities, the Trust has determined that such joint ventures should be accounted for under the equity method of accounting for financial statement purposes.

RBH-TRB Newark Holdings LLC was determined to be a Variable Interest Entity ("VIE") because the total equity investment at risk is not sufficient to permit it to finance its activities without additional subordinated financial support by its equity holders. The Trust was determined to be the primary beneficiary as it has a controlling financial interest in the VIE as it has the power to direct the

**Note 2 - Basis of Preparation (Continued)**

activities of the VIE and has the obligation to absorb a majority of the VIE's expected losses. For these reasons, the Trust has consolidated the operations and assets of this VIE in the Trust's consolidated financial statements.

These statements should be read in conjunction with the consolidated financial statements and related notes which are included in BRT's Annual Report on Form 10-K for the year ended September 30, 2011.

The preparation of the financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements. Actual results could differ from those estimates.

**Note 3 - Equity**

**Common Share Dividend Distribution**

During the quarter ended December 31, 2011, the Trust did not declare a dividend to its shareholders.

**Restricted Shares**

An aggregate of 850,000 shares have been authorized for issuance under the Trust's equity incentive plans, of which 229,560 shares remain available for future grants at December 31, 2011. The restricted shares issued vest five years from the date of grant and under specified circumstances, including a change in control, may vest earlier. Since inception of the plans, 126,410 shares have vested and 491,705 shares have been granted and have not yet vested. For accounting purposes, the restricted stock is not included in the outstanding shares shown on the consolidated balance sheet until they vest, but is included in the earnings per share computation. The estimated fair value of restricted stock at the date of grant is being amortized ratably into expense over the applicable vesting period. For the three months ended December 31, 2011 and 2010, the Trust recorded \$210,000 and \$208,000 of compensation expense, respectively, as a result of the outstanding restricted shares. At December 31, 2011, \$1,591,000 has been deferred as unearned compensation and will be charged to expense over the remaining weighted average vesting period of approximately 2.85 years.

**Per Share Data**

Basic earnings (loss) per share attributable to holders of shares of beneficial interest was determined by dividing net income (loss) for the period by the weighted average number of common shares outstanding during each period.

Diluted earnings (loss) per share attributable to holders of shares of beneficial interest reflects the potential dilution that could occur if securities or other contracts to issue common shares were exercised or converted into common shares or resulted in the issuance of common shares that shared in the earnings of the Trust.

Basic and diluted shares outstanding for the three months ended December 31, 2011 and 2010 were 13,982,164 and 13,977,706, respectively.

**Note 3 — Equity (Continued)**

The impact of dilutive securities is not included in the computation of loss per share for the three months ended December 31, 2010, as the inclusion of such common share equivalents would be anti-dilutive.

**Note 4 - Real Estate Loans**

Information relating to real estate loans, all of which are earning interest, is summarized as follows (dollars in thousands):

Property Type	December 31, 2011		September 30, 2011	
	Real Estate Loans, Net	Percent	Real Estate Loans, Net	Percent
Multi-family residential	\$ 36,600	70%	\$ 26,300	39.2
Industrial	11,829	22	11,874	17.6
Office	2,250	4	24,975	37.1
Retail	2,000	4	4,117	6.1
	<u>52,679</u>	<u>100%</u>	<u>67,266</u>	<u>100%</u>
Deferred fee income	(880)		(576)	
Real estate loans, net	<u>\$ 51,799</u>		<u>\$ 66,690</u>	

The Trust recognized cash basis interest of \$150,000 on non-earning loans in the three months ended December 31, 2010.

At December 31, 2011, one borrower had a loan outstanding in excess of 5% of total assets. Information regarding this loans is set forth in the table below (dollars in thousands):

Property Type	Gross Loan Balance	# of Loans	% of Gross Loans	% of Assets	State	Status
Industrial	\$ 11,829	1	22.3%	6.0%	MD	Performing

Substantially all of the Trust's portfolio consists of senior mortgage loans secured by real properties, 40% of which are located in New York, 28% in Florida, 23% in Maryland and 9% in two other states.

**Note 5 - Real Estate Loan Held For Sale**

At September 30, 2011, the Trust had one loan classified as held for sale. The loan, which represented a pari passu interest in a loan with a principal balance of approximately \$17 million, had a carrying value of approximately \$8.5 million. In October 2011, pursuant to a Federal Bankruptcy Court approved joint plan of reorganization, the Trust and its loan participant sold the rights to the loan for net proceeds of approximately \$23.5 million. The Trust recognized a gain of \$3.2 million on the sale representing its 50% interest in the loan. The Trust provided \$15 million of financing for the purchase which was paid off on December 5, 2011.

**Note 6 - Allowance for Possible Losses**

A loan evaluated for impairment is deemed to be impaired when based on current information and events, it is probable, in the judgment of management, that the Trust will not be able to collect all amounts due according to the contractual terms of the loan documents. When making this evaluation numerous factors are considered, including, market evaluations of the underlying collateral, estimated operating cash flow from the property during the projected holding period, and estimated sales value computed by applying an estimated capitalization rate to the projected stabilized net operating income of the specific property, less selling costs, discounted at market discount rates. If upon completion of the evaluation, the value of the collateral securing the loan is less than the recorded investment in the loan, an allowance is created with a corresponding charge to expense. The fair values related to the collateral securing impaired loans, if any, are based on discounted cash flow models, which are considered to be level 3 within the fair value hierarchy. When the Trust acquires title to the property, the loan loss allowance is adjusted by charging off all amounts related to the loan and recording the property at its adjusted carrying value.

At December 31, 2011 and September 30, 2011 the Trust did not have an allowance for possible loan loss.

**Note 7 - Real Estate Properties**

A summary of real estate properties owned is as follows (dollars in thousands):

	<u>September 30, 2011 Balance</u>	<u>Costs Capitalized</u>	<u>Depreciation Amortization and Paydowns</u>	<u>December 31, 2011 Balance</u>
Shopping centers/Retail	\$ 2,853	—	\$ (26)	\$ 2,827
Multi-family and coop apartments	315	\$ 2	(17)	300
Commercial (a)	48,137	790	(151)	48,776
Land	7,972	—	—	7,972
Total real estate properties	<u>\$ 59,277</u>	<u>\$ 792</u>	<u>\$ (194)</u>	<u>\$ 59,875</u>

(a) Represents the real estate assets of RBH-TRB Newark Holdings LLC, a consolidated VIE which owns 26 operating and development properties in Newark, NJ. These properties contain a mix of office and retail space, totaling approximately 637,000 square feet. These assets are subject to blanket mortgages aggregating \$27,000,000, held by the Trust, which are eliminated in consolidation. Several of the assets are also encumbered by other mortgages which are discussed in Note 10 Debt Obligations — Mortgages Payable. The risks associated with our involvement in this VIE have not changed in the three months ended December 31, 2011. These risks are described in the 10-K for the fiscal year ended September 30, 2011.

For the three months ended December 31, 2011 and 2010 this VIE recorded revenues of \$439,000 and \$426,000 and operating expenses of \$629,000 and \$520,000, respectively, excluding interest expense and depreciation. The Trust made no capital contributions to this venture in the three months ended December 31, 2011.

See Note 11 — Commitments and Contingencies for a discussion of financing transactions entered into by the Newark Joint Venture between December 2011 and February 2012.

**Note 8 — Investment in Unconsolidated Ventures**

The Trust was a partner in an unconsolidated joint venture (the “Torchlight Joint Venture”) which venture had the right, but not the obligation, to purchase certain loans originated by the Trust. On November 30, 2011, the parties to this joint venture agreed to terminate the investment and exclusivity periods of such venture. As a result, commencing as of November 30, 2011, the Trust is not obligated to present loans it originated for sale to the joint venture. The Trust wrote off \$297,000 of capitalized costs in the current quarter relating to the termination of this arrangement.

The Trust is also a partner in two unconsolidated ventures, each of which owns and operates one property.

The Trust’s share of these three ventures’ earnings was \$222,000 and \$49,000 for the three months ended December 31, 2011 and 2010, respectively. The Trust’s equity in these three unconsolidated ventures totaled \$1,014,000 and \$4,247,000 at December 31, 2011 and September 30, 2011, respectively.

On January 12, 2012, the Trust entered into an unconsolidated joint venture which purchased a 207 unit multi-family complex in Marietta, Georgia. The Trust’s equity investment was \$2.56 million representing an 80% interest in the venture.

**Note 9 — Available-For-Sale Securities**

The Trust had available for sale securities which consisted solely of equity securities. Details regarding our available-for-sale securities are presented in the table below (dollars in thousands):

	<u>December 31, 2011</u>	<u>September 30, 2011</u>
Cost basis	\$ 2,946	\$ 2,488
Unrealized gains	743	406
Unrealized losses	(88)	(128)
Market value	<u>\$ 3,601</u>	<u>\$ 2,766</u>

Unrealized gains and losses are reflected as accumulated other comprehensive income-net unrealized gain on available-for-sale securities in the accompanying consolidated balance sheets.

The Trust’s available-for-sale equity securities were determined to be Level 1 financial assets within the valuation hierarchy established by current accounting guidance, and the valuation is based on current market quotes received from financial sources that trade such securities. All of the available-for-sale securities in an unrealized loss position are not considered to be other than temporary impairment because the Company expects the value of these securities to recover and plans on holding them until at least such recovery.

During the three months ended December 31, 2011, the Trust sold equity securities for \$556,000 with a cost basis of \$574,000, determined by specific identification. Accordingly, the Trust recognized a loss of \$18,000 from these sales. In the three months ended December 31, 2010, the Trust sold equity securities for \$640,000 with a cost basis of \$219,000, determined using average cost. Accordingly, the Trust recognized a gain of \$421,000 from these sales.

**Note 10 — Debt Obligations**

Debt obligations consist of the following (dollars in thousands):

	<u>December 31, 2011</u>	<u>September 30, 2011</u>
Line of Credit	—	—
Junior subordinated notes	\$ 37,400	\$ 37,400
Mortgages payable	18,629	14,417
Total debt obligations	<u>\$ 56,029</u>	<u>\$ 51,817</u>

*Line of credit*

On June 22, 2011, the Trust, through a wholly owned subsidiary, entered into a senior secured revolving credit facility with Capital One, N.A. For the three months ended December 31, 2011, fee amortization was \$37,000 and is a component of interest expense. At December 31, 2011 and September 30, 2011, there were no outstanding balances on this facility.

*Junior Subordinated Notes*

At December 31, 2011, the Trust's junior subordinated notes had an outstanding principal balance of \$37,400,000. The interest rates on the outstanding notes is set forth in the table below:

<u>Interest Period</u>	<u>Interest Rate</u>
May 2009 through March 14, 2011	3.50%
March 15, 2011 through July 31, 2012	3.00%
August 1, 2012 through April 29, 2016	4.90%
April 30, 2016 through April 30, 2036	Libor + 2.00%

Interest expense relating to the junior subordinated notes for the three months ended December 31, 2011 and 2010 was \$281,000 and \$521,000, respectively. Amortization of the deferred costs which is a component of interest expense on borrowed funds was \$5,000 and \$8,000 for the three months ended December 31, 2011 and 2010, respectively.

*Mortgages Payable*

The Trust has five first mortgages and one second mortgage outstanding with an aggregate principal balance at December 31, 2011 of \$18,629,000. One of these mortgages, with an outstanding balance at December 31, 2011 of \$2,016,000, is secured by a long term leasehold position on a shopping center owned by a consolidated joint venture. The remaining five mortgages, with outstanding balances at December 31, 2011 of \$16,613,000, are secured by individual parcels on two land assemblages in Newark, NJ owned by another consolidated joint venture. The Trust has guaranteed \$2,065,000 of one of the mortgage obligations at December 31, 2011, based on the current outstanding balance. The guarantee will increase to \$2,154,000 if the full amount of the \$8,600,000 loan is drawn and outstanding.

Interest expense relating to the mortgages payable including amortized mortgage costs for the three months ended December 31, 2011 and 2010 was \$456,000 and \$290,000 respectively.

During the three months ended December 31, 2011 and 2010, the Trust capitalized interest expense of \$311,000 and \$162,000 respectively. This interest is being capitalized in connection with the development of a portion of our Newark Joint Venture's properties.

**Note 11 — Commitment and Contingencies**

From December 29, 2011 through February 3, 2012, RBH-TRB East Mezz Urban Renewal Entity LLC (the “NJV Subsidiary”), entered into a series of agreements and transactions pursuant to which it obtained access to approximately \$50 million of financing for the construction of two buildings at properties owned by the Newark Joint Venture (as defined). Generally, the properties are located along Halsey Street and Maiden Lane in Newark, NJ (collectively, the “Property”). The funds are to be used to construct: (i) an approximately 92,000 gross square foot building of which 58,608 rentable square feet have been leased to two charter schools and 19,822 rentable square feet will be used for retail space; and (ii) an approximately 40,000 gross square foot building of which approximately 30,225 rentable square feet has been leased to a charter school and a day care center and approximately 5,700 rentable square feet will be leased for retail space. The funds will be made available to the NJV Subsidiary upon the satisfaction of specified benchmarks.

The schools and the day care have entered into 20 year leases - the term of the applicable lease generally commences when the tenant is able to move into its leased space. The leases with the three schools and day care center provide for aggregate annual rental payments of approximately \$1.26 million in the first year after construction increasing to approximately \$2.2 million at the end of the lease term.

Set forth below is a summary of the material terms of these financing arrangements:

<b>Sources</b>	<b>Nature Of Financing</b>	<b>Terms</b>	<b>Proceeds</b>
Qualified School Construction Bonds (1)	Loan	Matures December 2030. Interest only until December 2013 and then amortizes on a 20 year schedule. The interest rate currently payable by the NJV Subsidiary is 0.51% per annum.	\$ 22,748,000
Casino Reinvestment Development Authority (2)	Loan	Matures February 2032 and bears interest at the rate of 3.463% per year. This obligation is interest only until January 2019 and then it amortizes on a 30 year amortization schedule until December 2030 at which time it amortizes fully over the remaining term.	\$ 4,250,000
Brick City Development	Loan	Matures February 2022 with a 30 year amortization	\$ 1,000,000

[Table of Contents](#)

Corporation (3)		schedule, bears interest at a rate of 2% per year and requires a 1.5% annual fee on the principal amount then outstanding.		
TD Bank, N.A. (4)	Loan	Self- amortizing loan matures February 2014 and bears interest at a rate of 2.5% per year.	\$	2,000,000
Redevelopment Area Bond (5)	Loan	Matures in 2034. The bonds are serviced in full by annual payment- in-lieu of taxes (“PILOT”) of \$256,000 in 2013 increasing to approximately \$281,000 at maturity.	\$	1,832,000
Federal New Market Tax Credit Proceeds	Equity	An affiliate of Goldman Sachs purchased tax credits related to this project at a price of \$.070 for each \$1.00 of tax credit.	\$	16,380,000
Community Development Block Grant	Grant	The City of Newark has committed to provide a Community Development Block Grant for tenant improvements for the daycare center.	\$	2,000,000

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(1) In December 2011 (a) TD Bank, N.A. purchased these bonds and (b) the Newark Joint Venture prepaid \$118,000 of interest for 2012 on these bonds. The bonds are secured by a first mortgage on the Property. TD Bank has the right, in 2018, to require the repurchase of these bonds. If such right is exercised, the NJV Subsidiary will be required to refinance these bonds. The stated rate of interest on these bonds is 5.5% per year; however, the United States Treasury Department is covering the interest on these bonds at the rate of 4.99% per year and accordingly, the effective rate of interest for the NJV Subsidiary until 2018 is 0.51%.

- (2) This loan is secured by a second mortgage on the Property.
- (3) This loan secured by a third mortgage on the Property.
- (4) This loan is secured by a fourth mortgage on the Property.

[Table of Contents](#)

(5) The PILOT payments are payable in quarterly installments and may be subject to increase if the value of the land underlying the building is re-assessed.

The Newark Joint Venture has, with respect to the Qualified School Construction Bonds, guaranteed:

- The losses incurred by the lender by reason of certain “bad-acts” by the borrower (*e.g.*, fraud and misappropriation);
- The completion of the construction of the two buildings;
- The carrying costs associated with the properties (*e.g.*, interest on the bonds and the operating expenses of the buildings) until specified milestones have been achieved; and
- The principal associated with the bonds (but generally limited to \$3 million (which has already been posted as collateral)).

This financing represents the first phase of three contemplated financing phases for the development of the Teachers’ Village project. The remaining two phases contemplate that an aggregate of approximately \$85 million will be raised in 2012 from public or private sources (other than the Newark Joint Venture) for the construction of six residential/retail buildings at Teachers’ Village.

The NJV Subsidiary is a subsidiary of RBH- TRB Newark Holdings LLC (the “Newark Joint Venture”). The Newark Joint Venture is a consolidated subsidiary of the Trust in which the Trust owns a 50.1% equity interest.

**Note 12 — Comprehensive Income (Loss)**

Comprehensive income (loss) for the periods set forth below was as follows (dollars in thousands):

	Three Months Ended December 31,	
	2011	2010
Net income (loss)	\$ 3,461	\$ (681)
Other comprehensive income (loss) — Unrealized gain (loss) on available for-sale securities	377	(51)
Plus: net loss attributable to non controlling interests	413	173
Comprehensive income (loss) attributable to common shareholders	<u>\$ 4,251</u>	<u>\$ (559)</u>

**Note 13 - Segment Reporting**

Management has determined that it operates in two reportable segments: (i) a loan and investment segment which includes the origination and servicing of our loan portfolio and investments; and (ii) a real estate segment which includes the operation and disposition of our real estate assets.

[Table of Contents](#)

The following table summarizes our segment reporting for the three months ended December 31, 2011 (dollars in thousands):

	<u>Loan and Investment</u>	<u>Real Estate</u>	<u>Total</u>
Revenues	2,386	768	3,154
Interest on borrowed funds	211	256	467
Operating expenses relating to real estate properties	—	786	786
Other expenses	1,208	637	1,845
Amortization and depreciation	—	184	184
Total expenses	<u>1,419</u>	<u>1,863</u>	<u>3,282</u>
Total revenues less total expenses	967	(1,095)	(128)
Equity in (loss) earnings of unconsolidated ventures	(142)	67	(75)
Loss on sale of available-for-sale securities	(18)	—	(18)
Gain on sale of loan	<u>3,192</u>	<u>—</u>	<u>3,192</u>
Income (loss) from continuing operations	3,999	(1,028)	2,971
Discontinued operations:			
Gain on sale of real estate assets	<u>—</u>	<u>490</u>	<u>490</u>
Net income (loss)	3,999	(538)	3,461
Plus: net loss attributable to non-controlling interests	—	413	413
Net income (loss) attributable to common shareholders	<u>3,999</u>	<u>(125)</u>	<u>3,874</u>
Segment assets at December 31, 2011	<u>\$ 129,867</u>	<u>\$ 68,435</u>	<u>\$ 198,302</u>

**Note 13 -Segment Reporting (Continued)**

The following table summarizes our segment reporting for the three months ended December 31, 2010 (dollars in thousands):

	<u>Loan and Investment</u>	<u>Real Estate</u>	<u>Total</u>
Revenues	\$ 1,598	\$ 854	\$ 2,452
Interest expense	438	219	657
Other expenses	1,291	1,467	2,758
Amortization and depreciation	—	188	188
Total expenses	<u>1,729</u>	<u>1,874</u>	<u>3,603</u>
Total revenues less total expenses	(131)	(1,020)	(1,151)
Equity in earnings of unconsolidated ventures	—	49	49
Gain on sale of available-for-sale securities	<u>421</u>	<u>—</u>	<u>421</u>
Income (loss) from continuing operations	290	(971)	(681)
Net income (loss)	290	(971)	(681)
Less net loss attributable to noncontrolling interests	—	173	173
Net income (loss) attributable to common shareholders	<u>\$ 290</u>	<u>\$ (798)</u>	<u>\$ (508)</u>
Segment assets	<u>\$ 123,044</u>	<u>\$ 61,467</u>	<u>\$ 184,511</u>

**Note 14 — Fair Value of Financial Instruments**Financial Instruments Not Measured at Fair Value

The following methods and assumptions were used to estimate the fair value of each class of financial instruments that are not recorded at fair value on the consolidated balance sheets:

Cash and cash equivalents, accounts receivable (included in other assets), accounts payable and accrued liabilities: The carrying amounts reported in the consolidated balance sheet for these instruments approximate their fair value due to the short term nature of these accounts.

Real estate loans: The earning mortgage loans of the Trust which have variable rate provisions, based upon a margin over prime rate, have an estimated fair value which is equal to their carrying value assuming market rate of interest between 12% and 13%. The earning mortgage loans of the Trust which have fixed rate provisions have an estimated fair value of \$13,000 greater than their carrying value assuming market rates of interest between 11% and 12% which we believe reflect institutional lender yield requirements.

**Note 14 — Fair Value of Financial Instruments (Continued)**

**Junior Subordinated Notes:**

At December 31, 2011, the estimated fair value of the Trust's junior subordinated notes is higher than their carrying value by approximately \$349,000 based on a market rate of 4.06%.

**Mortgages Payable:**

At December 31, 2011, the estimated fair value of the Trust's mortgages payable is less than their carrying value by approximately \$765,000 assuming market interest rates between 4.58% and 17%. Market rates were determined using current financing transactions provided by third party institutions.

Considerable judgment is necessary to interpret market data and develop estimated fair value. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value assumptions.

Financial Instruments Measured at Fair Value

The Trust's fair value measurements are based on the assumptions that market participants would use in pricing the asset or liability. As a basis for considering market participant assumptions in fair value measurements, there is a fair value hierarchy that distinguishes between market participant assumptions based on market data obtained from sources independent of the reporting entity and the reporting entity's own assumptions about market participant assumptions. Level 1 assets/liabilities are valued based on quoted prices for identical instruments in active markets, Level 2 assets/liabilities are valued based on quoted prices in active markets for similar instruments, on quoted prices in less active or inactive markets, or on other "observable" market inputs and Level 3 assets/liabilities are valued based significantly on "unobservable" market inputs. The Trust does not currently own any financial instruments that are classified as Level 3.

At December 31, 2011 information regarding the Trust's financial assets measured at fair value are as follows (dollars in thousands):

	Carrying and Fair Value	Maturity Date	Fair Value Measurements Using Fair Value Hierarchy	
			Level 1	Level 2
Available-for-sale securities:				
Corporate equity securities	\$ 3,601	—	\$ 3,601	—

**Note 15 — New Accounting Pronouncements**

In May 2011, the FASB issued ASU No. 2011-04, which is included in ASC 820, Fair Value Measurement: Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S GAAP and IFRS. This update defines fair value, clarifies a framework to measure fair value, and requires specific disclosures of fair value measurements. The guidance is effective for the Trust's interim and annual reporting periods beginning October 1, 2011, and applied prospectively. The Trust does not expect adoption of this guidance to have a material impact on its financial condition, results of operations, or disclosures.

**Note 15 — New Accounting Pronouncements (Continued)**

In June 2011, the FASB issued ASU No. 2011-05, which is included in ASC 220, Presentation of Comprehensive Income. This update improves the comparability, consistency, and transparency of financial reporting and increases the prominence of items reported in other comprehensive income. The guidance requires all non-owner changes in shareholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The guidance will be effective for the Trust's interim and annual reporting periods beginning January 1, 2012, and applied retrospectively. The Trust does not expect adoption of this guidance to have a material impact on its financial condition, results of operations, or disclosures.

**Note 16 — Subsequent Events**

Subsequent events have been evaluated and any significant events, relative to our consolidated financial statements as of December 31, 2011 that warrant additional disclosure, have been included in the notes to the consolidated financial statements.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

### Forward-Looking Statements

With the exception of historical information, this report on Form 10-Q contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended. We intend such forward-looking statements to be covered by the safe harbor provision for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995 and include this statement for purposes of complying with these safe harbor provisions. Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words "may", "will", "believe", "expect", "intend", "anticipate", "estimate", "project", or similar expressions or variations thereof. Forward-looking statements involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, performance or achievements. Investors are cautioned not to place undue reliance on any forward-looking statements and are urged to read "item 1A Risk Factors" in our annual report on Form 10-K for the year ended September 30, 2011.

### Overview

We are a real estate investment trust, also known as a REIT. Our primary business is to originate and hold for investment senior mortgage loans secured by commercial and multi-family real estate property in the United States. We have also begun to acquire with our venture partners, multi-family residential properties. Our primary source of revenue has generally been interest income, which is the interest our borrowers pay on our loans, and to a lesser extent, loan fee income generated on the origination and extension of loans, rental revenue from real properties and investment income.

The following highlights our results of operations for the three months ended December 31, 2011 and our financial condition at December 31, 2011:

- we originated \$25.5 million of mortgage loans in the first quarter of fiscal 2012 compared to \$28.3 million in the first quarter of fiscal 2011;
- we have cash and cash equivalents and available-for-sale securities of \$80.2 million;
- our performing loan portfolio totaled \$52.7 million at December 31, 2011 and
- total revenues increased \$702,000 or 28.6% from \$2.5 million in the three months ended December 31, 2010 to \$3.2 million in the three months ended December 31, 2011.

We cannot predict with any certainty the potential impact the current economic uncertainty will have on our future financial performance. Until there is consistent and considerable improvement in the overall economy, we could experience (i) limited origination activity, (ii) borrower defaults, (iii) loan loss provisions and impairment charges, (iv) foreclosure actions (with an increase in expenses incurred in pursuing such actions), (v) the acquisition of additional properties in foreclosure proceedings, (vi) significant expenses for stabilizing, repairing and operating properties acquired in foreclosure proceedings, and (vii) reduced access to capital and increased cost of financing, all of which could result in a decline in our revenues and generate operating losses.

**Results of Operations****Revenues**

The following table sets forth a comparison of our revenues for the periods indicated:

(Dollars in thousands):	Three Months Ended December 31,		Increase (Decrease)	%Change
	2011	2010		
Interest on real estate loans	\$ 1,910	\$ 1,156	\$ 754	65.2%
Loan fee income	342	243	99	40.7%
Rental revenue from real estate properties	768	854	(86)	(10.1)%
Recovery of previously provided allowances	7	—	7	N/A
Other, primarily investment income	127	199	(72)	(36.2)%
Total revenues	<u>\$ 3,154</u>	<u>\$ 2,452</u>	<u>\$ 702</u>	28.6%

*Interest on real estate loans.* The increase is primarily due to a \$35.0 million increase in the average balance of earning loans outstanding. The increase in such balance is attributable to the increase in loan originations which we believe is the result of improved economic conditions in fiscal 2011 compared to fiscal 2010. Partially offsetting this increase was a decrease in interest income of approximately \$131,000 due to the decrease from 13.04% to 11.46% in the weighted average interest rate earned on the performing loan portfolio and the inclusion of \$150,000 in cash basis income collected on a non-performing loan in the first quarter of fiscal 2011.

*Loan fee income.* The increase is due to amortization of loan and extension fees the resulting from a larger loan portfolio.

*Rental revenue from real estate properties.* This decline is due to the loss of several tenants at the Market Street property owned by the Newark Joint Venture. This is a future development site and accordingly, leasing of this property is challenging.

**Expenses**

The following table sets forth a comparison of our expenses for the periods indicated:

(Dollars in thousands)	Three Months Ended December 31,		Increase (Decrease)	% Change
	2011	2010		
Interest — borrowed funds	\$ 467	\$ 657	\$ (190)	(28.9)%
Advisor's fees — related party	171	221	(50)	22.6%
Foreclosure related professional fees	—	190	(190)	N/A
General and administrative	1,674	1,431	243	17.0%
Operating expenses relating to real estate properties	786	916	(130)	(14.2)%
Amortization and depreciation	184	188	(4)	(2.1)%
Total expenses	<u>\$ 3,282</u>	<u>\$ 3,603</u>	<u>\$ (321)</u>	(8.9)%

## [Table of Contents](#)

*Interest - borrowed funds.* In March 2011, we restructured our junior subordinated notes to reduce the interest rate and principal amount outstanding. As a result, \$203,000 of the decrease in interest expense is due to the reduction of the interest rate and \$41,000 of the decrease is due to the reduction in the principal amount outstanding. Partially offsetting this decrease was an increase of \$37,000 related to the amortization of deferred credit line costs. Interest expense on these notes will increase beginning August 2013, as the interest rate on these notes will increase to 4.9% from the current 3%.

*Advisor's fees — related party.* The fee is calculated based on invested assets and decreased because of the decrease in the principal amount of the loan portfolio as of December 31, 2011, the measurement date for the fees payable in this quarter. These assets decreased primarily due to increased payoffs in the first quarter of fiscal 2012.

*Foreclosure related professional fees.* There were no such fees as we resolved all of the bankruptcy, foreclosure and related proceedings in which we had been involved.

*General and administrative.* The increase is the result of a \$117,000 increase in salary and salary related fees; specifically, a \$70,000 increase in year-end bonuses. The balance of the increase is due to increases in professional fees, allocated expenses, travel and advertising expense, none of which was individually significant.

*Operating expenses relating to real estate properties.* The decrease is primarily attributable to lower real estate property taxes at the Newark Joint Venture and our Daytona property.

### ***Other revenue and expense items***

*(Loss) gain on sale of available-for-sale securities-* In the first quarter of fiscal 2012, we sold available-for-sale securities with a cost basis of \$574,000 and recognized a loss of \$18,000. In the first quarter of fiscal 2011, we sold available-for-sale securities with a cost basis of \$219,000 and recognized a gain of approximately \$421,000.

*Gain on sale of loan —* In October 2011, pursuant to a Federal Bankruptcy Court approved joint plan of reorganization, we and our loan participant sold the rights to a loan, for net proceeds of approximately \$23.5 million. We recognized a \$3.2 million gain on the sale, representing our 50% interest in this loan.

### ***Discontinued operations***

In the first quarter of fiscal 2012, discontinued operations consisted of the gain on the sale of a vacant cooperative apartment in New York City.

## **Liquidity and Capital Resources**

Liquidity is a measurement of our ability to meet cash requirements, including to fund loan originations, pay operating expenses, repay borrowings, and other general business needs. We require capital to fund loan originations, acquire properties and pay operating expenses. Our current sources of capital and liquidity primarily consist of our cash, marketable securities, and our participation arrangement with 512 Lending LLC. In the first quarter of fiscal 2012, we originated \$25.5 million in mortgage loans and had loan payoffs of \$51.7 million and as a result, at December 31, 2011, our total available liquidity increased to approximately \$80.2 million, including approximately \$76.6 million of cash and cash equivalents.

We believe we have sufficient capital to meet our operating expenses in fiscal 2012, to fund any capital contributions required by the general operations of the Newark Joint Venture, to engage in our primary lending business and to acquire properties.

The Newark Joint Venture may borrow up to \$8.6 million (of which \$8.2 million had been borrowed at December 31, 2011) to fund specified development activities with respect to the Teachers Village project.

From December 29, 2011 through February 3, 2012, a subsidiary of the venture entered into a series of agreements and transactions pursuant to which it gained access to approximately \$50 million of financing to fund the construction of two buildings at the Teacher's Village site in Newark, New Jersey. These funds will be released to the venture from time to time upon satisfaction of specified conditions of this project. The venture is seeking up to an additional \$85 million to complete the construction of an additional six residential/retail buildings at such site. No assurance can be given that the Newark Joint Venture will obtain the remaining financing or that if such financing is obtained, that the project will be profitable. BRT does not anticipate using its own capital to provide the required financing.

### ***Participation Arrangement***

In November 2011, we entered into an arrangement with 512 Lending, LLC pursuant to which each of us, with specified exceptions, must present to the other the opportunity (but not the obligation) to participate in loans such party originates. The arrangement expires in November 2014, subject to earlier termination by either party on not less than 60 days' notice for any reason. It is generally anticipated that 512 Lending will fund between 50% to 80% of the principal amount of loans we originate and in which they elect to participate and that we will fund up to 20% of the principal amount of loans they originate and in which we elect to participate. To date, neither party has, pursuant to this arrangement, participated in loans originated by the other party.

### **Cash Distribution Policy**

The Board of Trustees reviews the dividend policy regularly. The Trust has net operating loss carry forwards from prior years to offset future income. It is highly unlikely that we will pay or be required to pay any dividend in 2012 and for several years thereafter in order for the Trust to retain its REIT status.

### **Off Balance Sheet Arrangements**

At December 31, 2011, the Trust had guaranteed \$2,065,000 of a mortgage obligation of its Newark Joint Venture. The outstanding balance of the mortgage at December 31, 2011 was \$8,244,000. The guarantee will increase to \$2,154,000 if the full amount of the \$8,600,000 loan is drawn and outstanding.

**Item 3. Quantitative and Qualitative Disclosures About Market Risks**

Our primary component of market risk is interest rate sensitivity. Our interest income is subject to changes in interest rates. We seek to minimize these risks by originating loans that are indexed to the prime rate, with a stated minimum interest rate. At December 31, 2011, approximately 84% the principal amount of our outstanding mortgage loans were comprised of variable rate based loans tied to the prime rate and with a stated minimum interest rate. When determining interest rate sensitivity, we assume that any change in interest rates is immediate and that the interest rate sensitive assets and liabilities existing at the beginning of the period remain constant over the period being measured. We assessed the market risk for our variable rate mortgage receivables as of December 31, 2011 and believe that a one percent increase in interest rates would have a positive annual effect of approximately \$424,000 on income before taxes and a one percent decline in interest rates would have no annual effect on income before taxes because all of our variable rate loans have a stated minimum rate. As of December 31, 2011, 40% of our loan portfolio was secured by properties located in the New York metropolitan area, 28% in Florida and 23% in Maryland and we are therefore subject to risks associated with those markets.

**Item 4. Controls and Procedures**

As required under Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, we carried out an evaluation under the supervision and with the participation of our management, including our Chief Executive Officer, Senior Vice President-Finance and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2011. Based upon that evaluation, the Chief Executive Officer, Senior Vice President-Finance and Chief Financial Officer concluded that our disclosure controls and procedures as of December 31, 2011 are effective.

There have been no changes in our internal control over financial reporting during the quarter ended December 31, 2011 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting or in other factors that could significantly affect these controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

**Part II****Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.**

In September 2011, we announced that our Board of Trustees had authorized a share buyback plan pursuant to which we may, through September 2013, expend up to \$2,000,000 to acquire our common shares. Set forth below is a table which provides the purchases we made in the quarter ended December 31, 2011:

**Issuer Purchases of Equity Securities**

<u>Period</u>	<u>Total Number of Shares</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</u>	<u>Approximate Dollar Value that May Yet Be Purchased Under the Plans or Programs</u>
October 1, 2011 — October 31, 2011	80,325	\$ 6.25	80,325	\$ 1,451,569
November 1, 2011 — November 30, 2011	42,621	\$ 6.25	42,621	\$ 1,185,188
December 1, 2011 — December 31, 2011	—	—	—	\$ 1,185,188
Total	<u>122,946</u>	\$ 6.25	<u>122,946</u>	

**Item 5. Other Information**

From December 29, 2011 through February 3, 2012, RBH-TRB East Mezz Urban Renewal Entity LLC (the “NJV Subsidiary”), entered into a series of agreements and transactions pursuant to which it obtained access to approximately \$50 million of financing for the construction of two buildings at properties owned by the Newark Joint Venture (as defined). Generally, the properties are located along Halsey Street and Maiden Lane in Newark, NJ (collectively, the “Property”). The funds are to be used to construct: (i) an approximately 92,000 gross square foot building of which 58,608 rentable square feet have been leased to two charter schools and 19,822 rentable square feet will be used for retail space; and (ii) an approximately 40,000 gross square foot building of which approximately 30,225 rentable square feet has been leased to a charter school and a day care center and approximately 5,700 rentable square feet will be leased for retail space. The funds will be made available to the NJV Subsidiary upon the satisfaction of specified benchmarks. The Newark Joint Venture estimates that these buildings will be completed in 2013.

[Table of Contents](#)

The schools and the day care have entered into 20 year leases - the term of the applicable lease generally commences when the tenant is able to move into its leased space. The leases with the three schools and day care center provide for aggregate annual rental payments of approximately \$1.26 million in the first year after construction increasing to approximately \$2.2 million at the end of the lease term. The marketing effort to lease the retail space in these buildings has commenced.

Set forth below is a summary of the material terms of these financing arrangements:

<u>Sources</u>	<u>Nature Of Financing</u>	<u>Terms</u>	<u>Proceeds</u>
Qualified School Construction Bonds (1)	Loan	Matures December 2030. Interest only until December 2013 and then amortizes on a 20 year schedule. The interest rate currently payable by the NJV Subsidiary is 0.51% per annum.	\$ 22,748,000
Casino Reinvestment Development Authority (2)	Loan	Matures February 2032 and bears interest at the rate of 3.463% per year. This obligation is interest only until January 2019 and then it amortizes on a 30 year amortization schedule until December 2030 at which time it amortizes fully over the remaining term.	\$ 4,250,000
Brick City Development Corporation (3)	Loan	Matures February 2022 with a 30 year amortization schedule, bears interest at a rate of 2% per year and requires a 1.5% annual fee on the principal amount then outstanding.	\$ 1,000,000
TD Bank, N.A. (4)	Loan	Self- amortizing loan matures February 2014 and bears interest at a rate of 2.5% per year.	\$ 2,000,000

[Table of Contents](#)

Redevelopment Area Bond (5)	Loan	Matures in 2034. The bonds are serviced in full by annual payment- in-lieu of taxes (“PILOT”) of \$256,000 in 2013 increasing to approximately \$281,000 at maturity.	\$ 1,832,000
Federal New Market Tax Credit Proceeds	Equity	An affiliate of Goldman Sachs purchased tax credits related to this project at a price of \$.070 for each \$1.00 of tax credit.	\$ 16,380,000
Community Development Block Grant	Grant	The City of Newark has committed to provide a Community Development Block Grant for tenant improvements for the daycare center.	\$ 2,000,000

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(1) In December 2011 (a) TD Bank, N.A. purchased these bonds and (b) the Newark Joint Venture prepaid \$118,000 of interest for 2012 on these bonds. The bonds are secured by a first mortgage on the Property. TD Bank has the right, in 2018, to require the repurchase of these bonds. If such right is exercised, the NJV Subsidiary will be required to refinance these bonds. The stated rate of interest on these bonds is 5.5% per year; however, the United States Treasury Department is covering the interest on these bonds at the rate of 4.99% per year and accordingly, the effective rate of interest for the NJV Subsidiary until 2018 is 0.51%.

(2) This loan is secured by a second mortgage on the Property.

(3) This loan secured by a third mortgage on the Property.

(4) This loan is secured by a fourth mortgage on the Property.

(5) The PILOT payments are payable in quarterly installments and may be subject to increase if the value of the land underlying the building is re-assessed.

The Newark Joint Venture has, with respect to the Qualified School Construction Bonds, guaranteed:

- The losses incurred by the lender by reason of certain “bad-acts” by the borrower (*e.g.*, fraud and misappropriation);

## [Table of Contents](#)

- The completion of the construction of the two buildings;
- The carrying costs associated with the properties (*e.g.*, interest on the bonds and the operating expenses of the buildings) until specified milestones have been achieved; and
- The principal associated with the bonds (but generally limited to \$3 million (which has already been posted as collateral)).

This financing represents the first phase of three contemplated financing phases for the development of the Teachers' Village project. The remaining two phases contemplate that an aggregate of approximately \$85 million will be raised in 2012 from public or private sources (other than the Newark Joint Venture) for the construction of six residential/retail buildings at Teachers' Village.

No assurance can be given that the buildings contemplated by the first phase of this project will be built, that if built, that such buildings will generate positive cash flow or be profitable or that the financing to complete the remaining two phases of the Teachers' Village project will be obtained.

The NJV Subsidiary is a subsidiary of RBH- TRB Newark Holdings LLC (the "Newark Joint Venture"). The Newark Joint Venture is a consolidated subsidiary of ours in which we own a 50.1% equity interest.

[Table of Contents](#)

**Item 6. Exhibits**

<b>Exhibit No.</b>	<b>Title of Exhibits</b>
10.1*	2009 Incentive Plan, as amended
10.2*	Amendment No. 1 dated as of December 8, 2011 to Amended and Restated Advisory Agreement between us and REIT Management
10.3	Bond agreement dated as of December 1, 2011 by and among the New Jersey Economic Development Authority, RBH-TRB East Mezz Urban Renewal Entity, LLC and TD Bank, N.A.
10.4	Note dated December 29, 2011 issued by RBH-TRB East Mezz Urban Renewal Entity LLC in favor of New Jersey Economic Development Authority
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Senior Vice President—Finance pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.3	Certification of Vice President and Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of President and Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Senior Vice President—Finance pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.3	Certification of Vice President and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Definition Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document

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\* Indicates management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

BRT REALTY TRUST  
(Registrant)

February 9, 2012  
Date

/s/ Jeffrey A. Gould  
Jeffrey A. Gould, President and  
Chief Executive Officer

February 9, 2012  
Date

/s/ George Zweier  
George Zweier, Vice President  
and Chief Financial Officer  
(principal financial officer)

**BRT REALTY TRUST 2009 INCENTIVE PLAN,  
As Amended March 8, 2010**

**1. Purpose.**

The purpose of the BRT Realty Trust 2009 Incentive Plan is to advance the interests and promote the success of BRT Realty Trust by providing an opportunity to officers, trustees, selected employees, and consultants of the Trust to purchase shares of beneficial interest \$3.00 par value, of the Trust and/or to receive stock awards provided for in the Plan. By encouraging such share ownership, the Trust seeks to attract, retain and motivate officers, trustees, employees and consultants of experience and ability. It is intended that this purpose will be effected by the granting of the following share-based incentives: (a) Non-statutory Stock Options; (b) Incentive Stock Options intended to qualify under Section 422 of the Internal Revenue Code of 1986, as amended; (c) Restricted Shares; and (d) Performance Based Awards.

**2. Definitions.**

Capitalized terms not defined elsewhere in the Plan shall have the following meanings (whether used in the singular or plural).

“Affiliate” of the Trust means any corporation, partnership, or other business association that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Trust.

“Approved Transaction” means any transaction in which the Board (or, if approval of the Board is not required as a matter of law, the shareholders of the Trust) shall approve (i) any consolidation or merger of the Trust, or binding share exchange, pursuant to which Beneficial Shares would be changed or converted into or exchanged for cash, securities, or other property, other than any such transaction in which the holders of Beneficial Shares of the Trust immediately prior to such transaction have the same proportionate ownership of the common stock of, and voting power with respect to, the surviving entity immediately after such transaction, (ii) any merger, consolidation, or binding share exchange to which the Trust is a party as a result of which the Persons who are holders of Beneficial Shares of the Trust immediately prior thereto have less than a majority of the combining voting power of the outstanding capital stock of the surviving entity ordinarily (and apart from the rights accruing under special circumstances) having the right to vote in the election of Trustees (directors) immediately following such merger, consolidation, or binding share exchange, (iii) the adoption of any plan or proposal for the liquidation or dissolution of the Trust, or (iv) any sale, lease, exchange, or other transfer (in one transaction or a series of related transactions) of all, or substantially all, of the assets of the Trust.

“Award” means a grant of Options, Restricted Shares or Performance-Based Awards under this Plan.

“Beneficial Shares” means shares of beneficial interest, \$3.00 par value of the Trust.

“Board” means the Board of Trustees of the Trust.

“Board Change” means, during any period of two consecutive years, individuals who at the beginning of such period constituted the entire Board cease for any reason to constitute a majority thereof unless the election, or the nomination for election, of each new director was approved by a vote of at least two-thirds of the Trustees then still in office who were Trustees at the beginning of the period.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any successor statute or statutes thereto. Reference to any specific Code section shall include any successor section.

“Committee” means the committee of the Board appointed to administer the Plan.

“Control Purchase” means any transaction (or series of related transactions) in which (i) any person (as such term is defined in Sections 13(d)(3) and 14(d)(2) of the Exchange Act), corporation, or other entity (other than the Trust, any Subsidiary of the Trust, or any employee benefit plan sponsored by the Trust or any Subsidiary of the Trust) shall purchase any Beneficial Shares of the Trust (or securities convertible into Beneficial Shares of the Trust) for cash, securities, or any other consideration pursuant to a tender offer or exchange offer, without the prior consent of the Board, or (ii) any person (as such term is so defined), corporation, or other entity (other than the Trust, any Subsidiary of the Trust, any employee benefit plan sponsored by the Trust or any Subsidiary of the Trust or any Exempt Person (as defined below)) shall become the “beneficial owner” (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Trust representing 20% or more of the combined voting power of the then outstanding securities of the Trust ordinarily (and apart from the rights accruing under special circumstances) having the right to vote in the election of Trustees (calculated as provided in Rule 13d-3(d) under the Exchange Act in the case of rights to acquire the Trust’s securities), other than in a transaction (or series of related transactions) approved by the Board. For purposes of this definition, “Exempt Person” means each of Gould Investors L.P. and Fredric H. Gould, Jeffrey A. Gould, Matthew J. Gould, and the respective successors and assigns, family members, estates, and heirs of an Exempt Person and any trust or other investment vehicle for the primary benefit of any Exempt Person or their family members or heirs. As used with respect to any Person, the term “family member” means the spouse, siblings, and lineal descendants of such Person and lineal descendants of siblings.

“Disability” means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

“Domestic Relations Order” means a domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder.

“Effective Date” means the date the Plan is approved by the Trust’s shareholders. The Plan shall become effective immediately upon such approval.

“Equity Security” shall have the meaning ascribed to such term in Section 3(a)(11) of the Exchange Act, and an equity security of an issuer shall have the meaning ascribed thereto in Rule 16a-1 promulgated under the Exchange Act, or any successor Rule.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, or any successor statute or statutes thereto. Reference to any specific Exchange Act section shall include any successor section.

“Fair Market Value” of Beneficial Shares on any day means the last sale price (or, if no last sale price is reported, the average of the high bid and low asked prices) for a Beneficial Share on such day (or, if such day is not a trading day, on the next preceding trading day) as reported on the principal national securities exchange on which Beneficial Shares are listed on such day or if such shares are not then listed on a national securities exchange, then as reported on Nasdaq or, if such shares are not then listed or quoted on Nasdaq, then as quoted by the National Quotation Bureau Incorporated. If for any day the Fair Market Value of a Beneficial Share is not determinable by any of the foregoing means, then the Fair Market Value for such day shall be determined in good faith by the Committee on the basis of such quotations and other considerations as the Committee deems appropriate.

“Holder” means a Person who has received an Award under this Plan.

“Incentive Stock Option” means an Option intended to meet the requirements of Section 422 of the Code.

“Nasdaq” means The Nasdaq Stock Market

“Non-statutory Stock Option” means an option not intended to meet the requirements of Section 422 of the Code.

“Option” means either an Incentive Stock Option meeting the requirements of Section 422 of the Code or a Non-statutory Stock Option which are not intended to meet the requirements of Section 422 of the Code.

“Participant” means an officer, employee, director or consultant of the Trust who has been granted an Award under the Plan.

“Performance-Based Award” means any Restricted Stock Award or Performance Share Award granted to a Participant that qualifies as “performance based compensation” under Section 162(m) of the Code.

“Performance Criteria” shall mean any, a combination of, or all of the following: revenue, earnings, earnings per share, share price, costs, return on equity, shareholders’ equity (book value), per share shareholders’ equity (per share book value), asset growth, net operating income (NOI), cash available for distribution (CAD), CAD per share, total shareholder return on an absolute or a peer comparable basis (TSR), return on assets, revenue growth, or goals relating to loan originations or property sales. Performance Goals need not be the same with respect to all Participants and may be established separately for the Trust as a whole, or on a per share basis, and may be based on performance compared to performance by businesses specified by the Committee, or compared to any prior period. All calculations and financial accounting matters relevant to this Plan shall be determined in accordance with GAAP, except as otherwise directed by the Committee.

“Performance Cycle” means one or more periods of time which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant’s right to and the payment of a Performance-Based Award. A Performance Cycle shall not be less than twelve months.

“Performance Goals” means for a Performance Cycle, the specific goals established by the Committee for a Performance Cycle based upon the Performance Criteria.

“Person” means an individual, corporation, limited liability company, partnership, trust, incorporated or unincorporated association, joint venture or other entity of any kind.

“Plan” means this BRT Realty Trust 2009 Incentive Plan, as amended from time to time.

“Restricted Shares” means Beneficial Shares awarded in accordance with the terms ascribed in Section 9.

“Restriction Period” means the period during which Restricted Shares awarded hereunder are subject to a substantial risk of forfeiture. Such restrictions may be based on the passage of time, the achievement of Performance Goals or the occurrence of other events as determined by the Committee.

“Subsidiary” of a Person means any present or future subsidiary (as defined in Section 424(f) of the Code) of such Person or any business entity in which such Person owns, directly or indirectly, 50% or more of the voting, capital, or profits interests. An entity shall be deemed a subsidiary of a Person for purposes of this definition only for such periods as the requisite ownership or control relationship is maintained.

“Trust” means BRT Realty Trust, a Massachusetts Business Trust.

### **3. Shares Subject to the Plan.**

(a) The maximum number of Beneficial Shares with respect to which Awards may be granted under the Plan shall not exceed 500,000 Beneficial Shares, subject to adjustment as provided in paragraph 3(c) hereof. Any Beneficial Share subject to an Award which for any reason (i) expires, is cancelled or is forfeited prior to becoming vested, or (ii) is terminated unexercised, shall again be available for purposes of the Plan. The Beneficial Shares delivered pursuant to Awards granted under the Plan may, in whole or in part, be authorized but unissued shares, treasury shares, or any other issued shares subsequently reacquired by the Trust, including shares purchased in the open market.

(b) The Committee may impose such restrictions on any Beneficial Shares acquired hereunder as it may deem advisable or appropriate, including, but not limited to, restrictions related to applicable Federal securities laws, the requirements of any national securities exchange or system upon which the Beneficial Shares are then listed or traded, and any blue sky or state securities laws.

(c) If the Trust subdivides its outstanding Beneficial Shares into a greater number of Beneficial Shares (by stock dividend, stock split, reclassification, or otherwise) or combines its outstanding Beneficial Shares into a smaller number of Beneficial Shares (by reverse stock split, reclassification, or otherwise) or if the Committee determines that any stock dividend, extraordinary cash dividend, reclassification, recapitalization, reorganization, split-up, spin-off, combination, exchange of shares, warrants or rights offering to purchase Beneficial Shares, or other similar corporate event (including mergers or consolidations other than those which constitute Approved Transactions, adjustments with respect to which shall be governed by paragraph 11(b)) affects any Beneficial Shares so that an adjustment is required to preserve the benefits or potential benefits intended to be made available under this Plan, then the Committee, in its sole discretion and in such manner as the Committee may deem equitable and appropriate, may make such adjustments to any or all of (i) the number and kind of shares of stock which thereafter may be awarded, optioned, or otherwise made subject to the benefits contemplated by the Plan, (ii) the number and kind of shares of stock subject to outstanding Awards, and (iii) the purchase or exercise price with respect to any of the foregoing, provided, however, that the number of shares subject to any Award shall always be a whole number. Notwithstanding the foregoing, if all Beneficial Shares are redeemed, then each outstanding Award shall be adjusted to substitute for the shares subject thereto the kind and amount of cash, securities or other assets issued or paid in the redemption of the equivalent number of Beneficial Shares and otherwise the terms of such Award, including in the case of Options or similar rights, the total exercise price shall remain constant before and after the substitution (unless otherwise determined by the Committee and provided in the applicable Agreement). The Committee may, if deemed appropriate, provide for a cash payment to any Holder of an Award in connection with any adjustment made pursuant to this paragraph 3(c). Any such numerical limitations shall be subject to adjustment under this Section only to the extent such adjustment will not affect the status of any Award intended to qualify as “performance-based compensation” under section 162(m) of the Code or the ability to grant or the qualification of Incentive Stock Options under the Plan.

### **4. Administration.**

The Plan shall be administered by the Compensation Committee of the Board unless a different committee is appointed by the Board. The Board may from time to time appoint members of the Committee in substitution for and in addition to members previously appointed and may fill vacancies and may remove members of the Committee. All of the members of the Committee must be Trustees of the Trust. All of the members of the compensation committee or any different Committee approved by the board must be non-employee and outside trustees (directors) under (Treasury Regulation 162(m) and Section 16b-3 of the Exchange Act. The Committee shall have the exclusive authority to administer

and construe the Plan in accordance with its provisions. The Committee's authority shall include, without limitation, the power to (a) determine persons eligible for Awards, (b) prescribe the terms and conditions of the Awards, (c) construe and interpret the Plan, the Awards and any Award Agreement, (d) adopt rules for the administration, interpretation and application of the Plan as are consistent therewith and (e) establish, interpret, amend or revoke any such rules. With respect to any Award that is intended to qualify as "performance-based compensation" within the meaning of section 162(m) of the Code, the Committee shall have no discretion to increase the amount of compensation that otherwise would be due upon attainment of a Performance Goal, although the Committee may have discretion to deny an Award or to adjust downward the compensation payable pursuant to an Award, as the Committee determines in its sole judgment. All determinations and decisions made by the Committee and any of its delegates pursuant to this Section 4 shall be final, conclusive and binding on all Holders, and shall be given the maximum deference permitted by law.

**5. Eligible Persons.**

In its sole discretion, the Committee may grant (i) Incentive Stock Options, Non-statutory Stock Options, Restricted Shares, or Performance Based Awards, and any combination of the foregoing, to such officers, Trustees, employees and consultants providing services to the Trust or its Subsidiaries ("Eligible Persons") as are selected by the Committee. The maximum number of Beneficial Shares with respect to which Options may be granted to any Eligible Person under this Plan during any calendar year shall be 40,000 Beneficial Shares, the maximum number of Beneficial Shares to which Performance Based Awards may be granted to any Eligible Person under this Plan is 40,000 and the maximum number of Beneficial Shares with respect to which all other Awards may be granted to any Eligible Person under this Plan during any calendar year shall be 30,000, in each case, subject to adjustment as provided in Paragraph 3(c) hereof.

**6. Duration of the Plan.**

The Plan shall terminate when all Beneficial Shares that may be made subject to Awards under the Plan have been acquired and, in the case of Incentive Stock Options only, ten years from the effective date of this Plan, if earlier, unless terminated earlier pursuant to paragraph 11(j) hereof, and no Awards may be granted thereafter.

**7. Stock Options.**

(a) Subject to the limitations of the Plan, the Committee shall designate from time to time those Eligible Persons to be granted Options, the time when each Option shall be granted to such Eligible Persons, the number of Beneficial Shares subject to such Options, and, subject to paragraph 7(b), the purchase price of the Beneficial Shares subject to such Option.

(b) The price at which shares may be purchased upon exercise of an Option shall be fixed by the Committee and subject to paragraph 8 hereof may not be less than the Fair Market Value of the Beneficial Shares subject to the Option as of the date the Option is granted.

(c) Subject to the provisions of the Plan with respect to death, retirement, and termination of employment and subject to paragraph 8 hereof, the term of each Option shall be for such period as the Committee shall determine as set forth in the applicable Agreement.

(d) An Option granted under the Plan shall become (and remain) exercisable during the term of the Option to the extent provided in the applicable Agreement and this Plan and, unless the Agreement otherwise provides, may be exercised to the extent exercisable, in whole or in part, at any time and from time to time during such term; provided, however, that subsequent to the grant of an Option, the Committee, at any time before complete termination of such Option, may accelerate the

time or times at which such Option may be exercised in whole or in part (without reducing the term of such Option).

(e) (i) An Option shall be exercised by written notice to the Trust upon such terms and conditions as the Agreement may provide and in accordance with such other procedures for the exercise of Options as the Committee may establish from time to time. The method or methods of payment of the purchase price for the shares to be purchased upon exercise of an Option and of any amounts required by paragraph 11(m) shall be determined by the Committee and may consist of (A) cash, (B) check, (C) whole Beneficial Shares, or (D) any combination of the foregoing methods of payment. The permitted method or methods of payment of the amounts payable upon exercise of an Option, if other than in cash or check, shall be set forth in the applicable Agreement and may be subject to such conditions as the Committee deems appropriate.

(ii) Unless otherwise determined by the Committee and provided in the applicable Agreement, any Beneficial Shares delivered in payment of all or any part of the amounts payable in connection with the exercise of an Option, and Beneficial Shares withheld for payment, shall be valued for such purpose at their Fair Market Value as of the exercise date.

(iii) The Trust shall effect the issuance or transfer of the Beneficial Shares purchased under the Option as soon as practicable after the exercise thereof and payment in full of the purchase price thereof and of any amounts required by paragraph 11(m), and within a reasonable time thereafter, such issuance or transfer shall be evidenced on the books of the Trust. Unless otherwise determined by the Committee and provided in the applicable Agreement, (A) no Holder or other Person exercising an Option shall have any of the rights of a shareholder of the Trust with respect to shares subject to an Option granted under the Plan until due exercise and full payment has been made, and (B) no adjustment shall be made for cash dividends or other rights for which the record date is prior to the date of such due exercise and full payment.

(f) Unless otherwise determined by the Committee and provided in the applicable Agreement, Options shall not be transferable other than by will or the laws of descent and distribution or pursuant to a Domestic Relations Order, and, except as otherwise required pursuant to a Domestic Relations Order, Options may be exercised during the lifetime of the Holder thereof only by such Holder (or his or her court-appointed legal representative).

(g) Without shareholder approval, (i) the Trust will not reprice, replace or regrant an outstanding Option either in connection with the cancellation of such Option or by amending an Award Agreement to lower the exercise price of such Option, and (ii) the Trust will not cancel outstanding Options in exchange for cash or other Awards.

#### **8. Restrictions on Options.**

(a) The aggregate Fair Market Value of the Beneficial Shares with respect to which Incentive Stock Options are exercisable for the first time by an individual during any calendar year shall not exceed \$100,000. If an Incentive Stock Option is granted pursuant to which the aggregate Fair Market Value of shares with respect to which it first becomes exercisable in any calendar year by an individual exceeds the aforementioned \$100,000 limitation, the portion of such option which is in excess of the \$100,000 limitation shall be treated as a Non-statutory Stock Option pursuant to Section 422(d)(1) of the Code. In the event that an individual is eligible to participate in any other share option plan of the Trust or any parent or Subsidiary of the Trust which is also intended to comply with the provisions of Section 422 of the Code, the \$100,000 limitation shall, to the extent provided under Section 422 of the Code, apply to the aggregate number of shares for which Incentive Stock Options may be granted under all such plans.

(b) Subject to the conditions in paragraph 8(c) hereof, if applicable, the purchase price per share payable upon the exercise of each Incentive Stock Option granted hereunder shall be as determined by the Committee in its discretion, but shall be at least 100% of the Fair Market Value on the date of grant.

(c) If any Participant, on the date of grant, is the owner of shares (as determined under Sections 422(b)(6) and 424(d) of the Code) possessing more than 10% of the total combined voting power of all classes of shares of the Trust or any parent or Subsidiary of the Trust, then the option price per share subject to such Incentive Stock Option shall not be less than 110% of the Fair Market Value, and the term of the option shall not exceed five years after the date of such grant.

(d) The purchase price per share payable upon the exercise of each non-statutory Option granted hereunder shall be determined by the Committee in its discretion, and shall be at least 85% of the Fair Market Value on the date of grant.

## **9. Restricted Shares.**

(a) Subject to the limitations of the Plan, the Committee shall designate those Eligible Persons to be granted awards of Restricted Shares, and shall determine the time when each such Award shall be granted. Beneficial Shares covered by awards of Restricted Shares will be issued at the beginning of the Restriction Period. The Committee shall designate the vesting date or vesting dates for each award of Restricted Shares, and may prescribe other restrictions, terms, and conditions applicable to the vesting of such Restricted Shares in addition to those provided in the Plan. The Committee shall determine the price, if any, to be paid by the Holder for the Restricted Shares. All determinations made by the Committee pursuant to this paragraph 9(a) shall be specified in the Agreement.

(b) The stock certificate or certificates representing Restricted Shares shall be registered in the name of the Holder to whom such Restricted Shares shall have been awarded. During the Restriction Period, certificates representing the Restricted Shares shall bear a restrictive legend to the effect that ownership of the Restricted Shares, and the enjoyment of all rights appurtenant thereto, are subject to the restrictions, terms, and conditions provided in the Plan and the applicable Agreement. Such certificates shall remain in the custody of the Trust or its designee, and the Holder shall deposit with the custodian stock powers or other instruments of assignment, each endorsed in blank, so as to permit retransfer to the Trust of all or any portion of the Restricted Shares that shall be forfeited or otherwise not become vested in accordance with the Plan and the applicable Agreement.

(c) Restricted Shares shall constitute issued and outstanding Beneficial Shares. The Holder will have the right to vote such Restricted Shares, to receive and retain cash dividends and cash distributions, paid or distributed on such Restricted Shares, and to exercise all other rights, powers, and privileges of a Holder of Beneficial Shares with respect to such Restricted Shares; except, that, unless otherwise determined by the Committee and provided in the applicable Agreement, (i) the Holder will not be entitled to delivery of the stock certificate or certificates representing such Restricted Shares until the Restriction Period shall have expired and unless all other vesting requirements with respect thereto shall have been fulfilled or waived; (ii) the Trust or its designee will retain custody of the stock certificate or certificates representing the Restricted Shares during the Restriction Period as provided in paragraph 9(b) above; (iii) other than cash dividends and cash distributions as provided in this paragraph 9(c) distributions of Beneficial Shares as a dividend in lieu of a cash dividend distribution and as the Committee may designate, the Trust or its designee will retain custody of all distributions ("Retained Distributions") made or declared with respect to the Restricted Shares (and such Retained Distributions will be subject to the same restrictions, terms and vesting, and other conditions as are applicable to the Restricted Shares) until such time, if ever, as the Restricted Shares with respect to which such Retained Distributions shall have been made, paid, or declared shall have become vested, and such Retained Distributions shall not bear interest or be segregated in a separate account; (iv) the

Holder may not sell, assign, transfer, pledge, exchange, encumber, or dispose of the Restricted Shares or any Retained Distributions or his interest in any of them during the Restriction Period; and (v) a breach of any restrictions, terms, or conditions provided in the plan or established by the Committee with respect to any Restricted Shares or Retained Distributions will cause a forfeiture of such Restricted Shares and any Retained Distributions with respect thereto.

(d) Upon the expiration of the Restriction Period with respect to each award of Restricted Shares and the satisfaction of any other applicable restrictions, terms, and conditions, (i) all or the applicable portion of such Restricted Shares shall become vested, and (ii) any Retained Distributions with respect to such Restricted Shares shall become vested to the extent that the Restricted Shares related thereto shall have become vested, all in accordance with the terms of the applicable Agreement. Any such Restricted Shares and Retained Distributions, that shall not become vested shall be forfeited to the Trust, and the Holder shall not thereafter have any rights (including dividend and voting rights) with respect to such Restricted Shares and Retained Distributions that shall have been so forfeited.

(e) For purposes of qualifying grants of Restricted Shares as “performance-based compensation” under Section 162(m) of the Code, the Committee, in its sole discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals shall be set by the Committee on or before the latest date permissible to enable the Restricted Shares to qualify as “performance-based compensation” under section 162(m) of the Code. In granting Restricted Shares that are intended to qualify under section 162(m) of the Code, the Committee shall follow any procedures determined by it in its sole discretion from time to time to be necessary, advisable or appropriate to ensure qualification of the Restricted Shares under section 162(m) of the Code.

#### **10. Performance-Based Awards.**

(a) Eligible Persons selected by the Committee may be granted one or more Performance Based-Awards upon the attainment of the Performance Goals that are established by the Committee and related to one or more of the Performance Criteria, in each case on a specified date or dates or over a Performance Cycle determined by the Committee. The Committee, in its sole discretion, shall determine whether or not a Performance Award is to qualify as “performance based compensation” under Section 162(m) of the Code. The Committee shall define the manner of calculating the Performance Criteria it selects to use for any Performance Cycle. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of the overall performance of the Trust or the performance of an individual. The Committee, in its sole discretion, may adjust or modify the calculation of Performance Goals for such Performance Cycle in order to prevent the dilution or enlargement of the rights of an individual (i) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event or development, (ii) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Trust, or the financial statements of the Trust, or (iii) in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions; *provided however*, that the Committee may not exercise such discretion in a manner that would increase the Performance-Based Award granted to a Holder. Each Performance-Based Award shall comply with the provisions set forth below.

(b) With respect to each Performance-Based Award granted to a Holder, if intended by the Committee to qualify as “performance based compensation” under Section 162(m) of the Code, the Committee shall select, within the first 90 days of a Performance Cycle, the Performance Criteria for such grant, and the Performance Goals with respect to each Performance Criteria (including a threshold level of performance below which no amount will become payable with respect to such Award). Each Performance-Based Award will specify the amount payable, or the formula for determining the amount payable, upon achievement of the various applicable Performance Goals. The Performance Criteria established by the Committee may be different for each Performance Cycle and different Performance Goals may be applicable to Performance-Based Awards to different Eligible Holders.

(c) Following the completion of a Performance Cycle, the Committee shall meet to review and certify in writing whether, and to what extent, the Performance Goals for the Performance Cycle have been achieved and, if achieved, to calculate and certify in writing the amount of the Performance-Based Awards earned for the Performance Cycle. The Committee shall then determine the actual size of each Participant's Performance-Based Award, and, in doing so, may reduce or eliminate the amount of the Performance-Based Award for a Participant if, in its sole judgment, such reduction or elimination is appropriate.

(d) The maximum number of shares of Beneficial Interest underlying a Performance-Based Award granted to any one Eligible Person for a Performance Cycle is an aggregate of 40,000 Beneficial Shares (subject to adjustment as provided in Sections 3 (c) and 10(a) hereof).

## **11. General Provisions.**

(a) If a Holder's employment or other relationship with the Trust shall terminate by reason of death or Disability, unless the applicable Agreement provides otherwise: (i) each outstanding Option granted under the Plan shall immediately become exercisable in full in respect of the aggregate number of shares covered thereby; and (ii) the Restriction Period applicable to each Award of Restricted Shares shall be deemed to have expired and all such Restricted Shares and any related Retained Distributions shall become vested; however with respect to a Performance Based Award, the Performance Based Award shall vest only if the Performance Goals shall have been satisfied and only to the extent set forth in the applicable Agreement.

(b) In the event of any Approved Transaction, Board Change or Control Purchase, notwithstanding any contrary waiting period, installment period, vesting schedule, Restriction Period or Performance Goals in any Agreement or in the Plan, unless the applicable Agreement provides otherwise: (i) in the case of an Option, each such outstanding Option granted under the Plan shall become exercisable in full in respect of the aggregate number of shares covered thereby; and (ii) in the case of Restricted Shares, the Restriction Period applicable to each such Award of Restricted Shares shall be deemed to have expired and all such Restricted Shares and any related Retained Distributions shall become vested; however, with respect to a Performance Based Award, the Performance Based Award shall vest only as shall be provided in the applicable Agreement. Notwithstanding the foregoing, unless otherwise provided in the applicable Agreement, the Committee may, in its discretion, determine that any or all outstanding Awards of any or all types granted pursuant to the Plan will not vest or become exercisable on an accelerated basis in connection with an Approved Transaction if effective provision has been made for the taking of such action which, in the opinion of the Committee, is equitable and appropriate to substitute a new Award for such Award or to assume such Award and to make such new or assumed Award, as nearly as may be practicable, equivalent to the old Award (before giving effect to any acceleration of the vesting or exercisability thereof), taking into account, to the extent applicable, the kind and amount of securities, cash, or other assets into or for which the Beneficial Shares may be changed, converted, or exchanged in connection with the Approved Transaction.

(c) If a Holder's employment shall terminate for any reason, other than death and disability prior to the complete exercise of an Option or during the Restriction Period with respect to any Restricted Shares or during a Performance Cycle with respect to Performance Based Awards, then such Option shall thereafter be exercisable, and the Holder's rights to any unvested Restricted Shares and Retained Distributions, and the Holder's rights to the Beneficial Shares underlying the Performance Based Awards shall thereafter vest, in each case only if and to the extent provided in the applicable Agreement; *provided, however*, that, unless otherwise determined by the Committee and provided in the applicable Agreement, (i) no Option may be exercised after the scheduled expiration date thereof; (ii) the Option shall remain exercisable for a period of at least one year following such termination

(but not later than the scheduled expiration of such Option); and (iii) any termination of the Holder's employment for cause will be treated in accordance with the provisions of paragraph 11(d).

(d) If a Holder's employment or relationship with the Trust or a Subsidiary of the Trust shall terminate for cause by the Trust or such Subsidiary during the Restriction Period with respect to any Restricted Shares, or prior to the expiration of a Performance Cycle with respect to any Performance Based Awards or prior to the exercise of any Option (for these purposes, cause shall have the meaning ascribed thereto in any employment agreement to which such Holder is a party or, in the absence thereof, shall include, but not limited to, insubordination, dishonesty, incompetence, moral turpitude, other misconduct of any kind, and the refusal to perform his duties and responsibilities for any reason (other than illness or incapacity) then, unless otherwise determined by the Committee and provided in the applicable Agreement, (i) all Options shall immediately terminate and (ii) such Holder's rights to all Restricted Shares and Retained Distributions and all shares underlying Performance Based Awards shall be forfeited immediately.

(e) Unless otherwise determined by the Committee and provided in the applicable Agreement, Awards made under the Plan shall not be affected by any change of employment so long as the Holder continues to be an employee of the Trust or any Subsidiary of the Trust.

(f) Nothing contained in the Plan or in any Award, and no action of the Trust or the Committee with respect thereto, shall confer or be construed to confer on any Holder any right to continue in the employ of the Trust or any of its Subsidiaries or interfere in any way with the right of the Trust or any Subsidiary of the Trust to terminate the employment of the Holder at any time, with or without cause, subject, however, to the provisions of any employment agreement between the Holder and the Trust or any Subsidiary of the Trust.

(g) Except as set forth herein, no right or benefit under the Plan shall be subject to anticipation, alienation, sale, assignment, hypothecation, pledge, exchange, transfer, encumbrance, or charge, and any attempt to anticipate, alienate, sell, assign, hypothecate, pledge, exchange, transfer, encumber or charge the same shall be void. No right or benefit hereunder shall in any manner be liable for or subject to the debts, contracts, liabilities, or torts of the Person entitled to such benefits.

(h) Each grant of an Option under the Plan shall be evidenced by a stock option agreement; each award of Restricted Shares shall be evidenced by a restricted shares agreement; and each Performance Based Award shall be evidenced by a Performance Based Award Agreement, each in such form and containing such terms and provisions not inconsistent with the provisions of the Plan as the Committee from time to time shall approve; *provided, however*, that if more than one type of Award is made to the same Holder, such Awards may be evidenced by a single Agreement with such Holder. Each grantee of an Option, Restricted Shares or Performance Based Awards shall be notified promptly of such grant, and a written Agreement shall be executed and delivered by the Trust. Any such written Agreement may contain (but shall not be required to contain) such provisions as the Committee deems appropriate (i) to insure that the penalty provisions of Section 4999 of the Code will not apply to any stock or cash received by the Holder from the Trust or (ii) to provide cash payments to the Holder to mitigate the impact of such penalty provisions upon the Holder. Any such Agreement may be supplemented or amended from time to time as approved by the Committee as contemplated by paragraph 11(j) (ii).

(i) Every Holder may designate a beneficiary or beneficiaries and may change such designation from time to time by filing a written designation of beneficiary or beneficiaries with the Committee on a form to be prescribed by it, provided that no such designation shall be effective unless so filed prior to the death of such Holder.

(j) (i) Unless the Plan shall theretofore have been terminated as hereinafter provided, no Awards may be made under the Plan on or after the tenth anniversary of the Effective Date. The Plan may be terminated at any time prior to the tenth anniversary of the Effective Date and may, from time to time,

be suspended or discontinued or modified or amended if such action is deemed advisable by the Committee.

(ii) No termination, modification or amendment of the Plan may, without the consent of the Holder to whom any Award shall theretofore have been granted, adversely affect the rights of such Holder with respect to such Award. No modification, extension, renewal, or other change in any Award granted under the Plan shall be made after the grant of such Award, unless the same is consistent with the provisions of the Plan. With the consent of the Holder and subject to the terms and conditions of the Plan, the Committee may amend outstanding Agreements with any Holder, including, without limitation, any amendment which would (A) accelerate the time or times at which the Award may be exercised and/or (B) extend the scheduled expiration date of the Award. Without limiting the generality of the foregoing, the Committee may, but solely with the Holder's consent unless otherwise provided in the Agreement, agree to cancel any Award under the Plan and grant a new Award in substitution therefore, provided that the Award so substituted shall satisfy all of the requirements of the Plan as of the date such new Award is made. Nothing contained in the foregoing provisions of this paragraph 11(j) (ii) shall be construed to prevent the Committee from providing in any Agreement that the rights of the Holder with respect to the Award evidenced thereby shall be subject to such rules and regulations as the Committee may, subject to the express provisions of the Plan, adopt from time to time or impair the enforceability of any such provision.

(k) The amendment, suspension or termination of the Plan shall not, without the consent of the Holder, alter or impair any rights or obligations under any Award theretofore granted to such Holder. No Award may be granted during any period of suspension or after termination of the Plan.

(l) The obligation of the Trust with respect to Awards shall be subject to all applicable laws, rules, and regulations and such approvals by any governmental agencies as may be required, including, without limitation, the effectiveness of any registration statement required under the Securities Act of 1933, and the rules and regulations of any securities exchange or association on which the Beneficial Shares may be listed or quoted. For so long as any Beneficial Shares are registered under the Exchange Act, the Company shall use its reasonable efforts to comply with any legal requirements (i) to maintain a registration statement in effect under the Securities Act of 1933 with respect to all Beneficial Shares that may be issued to Holders under the Plan and (ii) to file in a timely manner all reports required to be filed by it under the Exchange Act.

(m) The Trust's obligation to deliver Beneficial Shares or pay cash in respect of any Award under the Plan shall be subject to applicable federal, state, and local tax withholding requirements. Federal, state, and local withholding tax due at the time of an Award, upon the exercise of any Option or upon the vesting of, or expiration of restrictions with respect to, Restricted Shares may, in the discretion of the Committee, be paid in Beneficial Shares already owned by the Holder or through the withholding of shares otherwise issuable to such Holder, upon such terms and conditions as the Committee shall determine. If the Holder shall fail to pay, or make arrangements satisfactory to the Committee for the payment to the Trust of, all such federal, state and local taxes required to be withheld by the Trust, then the Trust shall, to the extent permitted by law, have the right to deduct from any payment of any kind otherwise due to such Holder an amount equal to any federal, state, or local taxes of any kind required to be withheld by the Trust with respect to such Award.

(n) The adoption of the Plan by the Board shall not be construed as creating any limitations on the power of the Board to adopt such other incentive arrangements as it may deem desirable, including, without limitation, the granting of stock options and the awarding of stock and cash otherwise than under the Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

(o) By acceptance of an Award, unless otherwise provided in the applicable Agreement, each Holder shall be deemed to have agreed that such Award is special incentive compensation that will not be taken into account, in any manner, as salary, compensation, or bonus in determining the amount of any payment under any pension, retirement, or other employee benefit plan, program, or policy of the Trust or any Subsidiary of the Trust. In addition, each beneficiary of a deceased Holder shall be deemed to have agreed that such Award will not affect the amount of any life insurance coverage, if any, provided by the Trust on the life of the Holder which is payable to such beneficiary under any life insurance plan covering employees of the Trust or any Subsidiary of the Trust.

(p) Neither the Trust nor any Subsidiary of the Trust shall be required to segregate any cash or any Beneficial Shares which may at any time be represented by Awards, and the Plan shall constitute an “unfunded” plan of the Trust. Neither the Trust nor any Subsidiary of the Trust shall, by any provisions of the Plan, be deemed to be a trustee of any Beneficial Shares or any other property, and the liabilities of the Trust and any Subsidiary of the Trust to any employee pursuant to the Plan shall be those of a debtor pursuant to such contract obligations as are created by or pursuant to the Plan, and the rights of any employee, former employee, or beneficiary under the Plan shall be limited to those of a general creditor of the Trust or the applicable Subsidiary of the Trust as the case may be. In its sole discretion, the Board may authorize the creation of trusts or other arrangements to meet the obligations of the Trust under the Plan, provided, however, that the existence of such trusts or other arrangements is consistent with the unfunded status of the Plan.

(q) The Plan shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

(r) The delivery of any Beneficial Shares and the payment of any amount in respect of an Award shall be for the account of the Trust or the applicable Subsidiary of the Trust, as the case may be, and any such delivery or payments shall not be made until the recipient shall have paid or made satisfactory arrangements for the payment of any applicable withholding taxes as provided in Paragraph 11(m).

(s) Each certificate evidencing Beneficial Shares subject to an Award shall bear such legends as the Committee deems necessary or appropriate to reflect or refer to any terms, conditions, or restrictions of the Award applicable to such shares, including, without limitation, any to the effect that the shares represented thereby may not be disposed of unless the Trust has received an opinion of counsel, acceptable to the Trust, that such disposition will not violate any federal or state securities laws.

(t) The grant of Awards pursuant to the Plan shall not affect in any way the right of power of the Trust to make reclassifications, reorganizations, or other changes of or to its capital or business structure or to merge, consolidate, liquidate, sell, or otherwise dispose of all or any part of its business or assets.

**AMENDMENT NO. 1 TO AMENDED AND  
RESTATED ADVISORY AGREEMENT**

Amendment No. 1 (the "Amendment") dated as of December 8, 2011 and effective as of January 1, 2012 to the Amended and Restated Advisory Agreement dated as of January 1, 2007, by and between BRT Realty Trust and REIT Management Corp. (the "Agreement").

WHEREAS, effective as of January 1, 2007, BRT Realty Trust and REIT Management Corp. entered into the Agreement,

WHEREAS, the Agreement has been extended from time to time so that it terminates on December 31, 2011, and

WHEREAS, the parties desire to amend the Agreement as provided for in this Amendment (capitalized terms used without being defined herein shall have the meaning ascribed to such term by the Agreement):

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

1. (a) Section 1 of the Agreement is amended by:

(a) deleting the following defined terms: "Base Fees", "Fiscal Year", "Invested Assets," and "Loan Origination Fee"; and

(b) adding the following defined terms:

"BVRE" shall mean the average book value of applicable real estate properties, excluding depreciation.

"2012" shall mean the twelve months beginning January 1, 2012.

"2013" shall mean the twelve months beginning January 1, 2013.

"Earning Loan" shall have the meaning ascribed to such term by Section 10(a)(i).

"Fiscal 2014" shall mean the six months beginning January 1, 2014.

"Investor's Percentage Interest" shall mean all the equity interests, expressed as a percentage, of all persons, other than the Trust and its wholly-owned subsidiaries, in a JV/Participation.

"JV/Participation" shall mean an entity (including, without limitation, a joint venture, partnership or limited partnership) or arrangement (including, without limitation, a participation agreement) pursuant to which the benefits of ownership of an asset is shared by the Trust or its wholly-owned subsidiaries with another person or entity.

"Managed Loans" shall mean loans held or owned by a JV/Participation in which the Trust or its wholly-owned direct or indirect subsidiaries is receiving compensation (including without limitation, origination or servicing fees) for administering or managing the JV/Participation or such loans.

"Managed Real Estate" shall mean real property held by a JV/Participation in which the Trust or its wholly-owned direct or indirect subsidiaries is receiving compensation

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(including without limitation, management fees) for administering or managing such JV/Participation or such real property.

“Non-Earning Loan” shall have the meaning ascribed to such term by Section 10(a)(ii).

“Passive Loans” shall mean loans held by a JV/Participation in which the Trust or its wholly-owned direct or indirect subsidiaries is not compensated for administering or managing the JV/Participation or such loans.

“Passive Real Estate” shall mean real property held by a JV/Participation in which the Trust is not compensated for administering or managing the JV/Participation or such real property.

“Periodic Report” shall mean the applicable quarterly or annual report filed by BRT with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended, and the financial information and/or work papers supporting the preparation of such quarterly or annual report.

“Trust’s Percentage Interest” shall mean all the equity interests, expressed as a percentage, held by the Trust and its direct and indirect wholly-owned subsidiaries, in a JV/Participation.

2. Section 3(j) of the Agreement is hereby amended to read as follows:

“(j) perform such other services of a managerial or advisory nature (including without limitation, the oversight of JV/Participations entered into by the Trust or its direct or indirect wholly-owned subsidiaries) as the Trustees may deem to be in the best interests of the Trust and to the extent not inconsistent with the nature of the services provided by the Advisor prior to December 8, 2011.”

3. Section 9 of the Agreement is hereby amended to read as follows:

“9. Minimum and Maximum Fees.

The minimum amount of Incentive Fees payable hereunder shall be \$750,000, \$750,000 and \$375,000 for 2012, 2013 and Fiscal 2014, respectively, and the maximum amount of Incentive Fees payable hereunder shall be \$4,000,000, \$4,000,000 and \$2,000,000 for 2012, 2013 and Fiscal 2014, respectively.

4. Section 10 of the Agreement is hereby amended to read as follows:

“10. Incentive Fees. (a) Subject to the minimum and maximum fees payable pursuant to Section 9, the Trust shall pay the Advisor on a quarterly basis in arrears the fee indicated with respect to each of the following items (excluding, however, Managed Loans, Passive Loans, Managed Real Estate and Passive Real Estate):

- (i) 0.25% of the average principal amount of earning loans (“Earning Loan”);
- (ii) 0.0875% of the average amount of the fair market value of non-earning loans (“Non-Earning Loan”);
- (iii) 0.1125% of BVRE;
- (iv) 0.0625% of the average amount of the fair market value of marketable securities; and
- (v) 0.0375% of the average amount of cash and cash equivalents.

(b) Subject to the minimum and maximum fees payable pursuant to Section 9, the Trust shall pay the Advisor on a quarterly basis in arrears the fee indicated with respect to each of the following items:

(i) with respect to Managed Real Estate:  $(0.1125\% \times \text{the Trust's Percentage Interest} \times \text{BVRE}) + (0.1\% \times \text{Investor's Percentage Interest} \times \text{BVRE})$ ; and

(ii) with respect to Passive Real Estate:  $(0.1125\% \times \text{the Trust's Percentage Interest} \times \text{BVRE})$ .

(c) Subject to the minimum and maximum fees payable pursuant to Section 9, the Trust shall pay the Advisor on a quarterly basis in arrears, the fee indicated with respect to each of the following items:

(i) with respect to each Managed Loan that is an Earning Loan:  $(0.25\% \times \text{the Trust's Percentage Interest} \times \text{Earning Loan}) + (0.1\% \times \text{Investor's Percentage Interest} \times \text{Earning Loan})$ ;

(ii) with respect to each Managed Loan that is a Non-Earning Loan:  $(0.0875\% \times \text{the Trust's Percentage Interest} \times \text{Non-Earning Loan}) + (0.0875\% \times \text{Investor's Percentage Interest} \times \text{Non-Earning Loan})$ ;

(iii) with respect to each Passive Loan that is an Earning Loan:  $(0.25\% \times \text{the Trust's Percentage Interest} \times \text{Earning Loan})$ ; and

(iv) with respect to each Passive Loan that is a Non-Earning Loan:  $(0.0875\% \times \text{the Trust's Percentage Interest} \times \text{Non-Earning Loan})$ .

(d) The average amount for these items shall be calculated by comparing the amount reflected for such item in the Periodic Report for the quarterly period for which such fees are being calculated to the Periodic Report filed for the immediately preceding quarter. The Incentive Fees shall be computed by the Trust and shall be paid to the Advisor within ten days of the filing of the Periodic Report with respect to the period for which the Incentive Fees are being calculated (but in no event later than 55 days after the end of the Trust's fiscal quarter or 85 days after the end of the Trust's fiscal year).

(e) Within 90 days after the end of each of 2012, 2013 and Fiscal 2014 or, if this Agreement is terminated prior to June 30, 2014, within ninety (90) days after the termination of this Agreement, the Trust shall recalculate all the payments made hereunder (as if such payments had been made on a twelve month basis rather than a quarterly basis) to determine whether the Trust has paid the Advisor the amount it is obligated to pay the Advisor hereunder for the applicable twelve months. In the event that it is determined that the Advisor has received more or less than the amount to which it is entitled to hereunder, within thirty (30) days of such determination, the Trust, in the case of an underpayment, or the Advisor, in the case of an overpayment, shall remit to the other the amount of such underpayment or overpayment, as the case may be. In the event of the termination of this Agreement other than on the last day of 2012, 2013 or Fiscal 2014, or as may otherwise be appropriate with respect to a period of less than twelve months, appropriate *pro rata* adjustments shall be made to the calculation of Incentive Fees payable pursuant to the Agreement.

(f) Notwithstanding anything to the contrary herein, the amounts payable pursuant to Section 10(b) and 10(c) with respect to a particular loan or real estate asset shall not exceed on a quarterly basis, the amount received by the Trust for servicing or managing such loan, real estate or the related JV/Participation during such period.

5. Section 15 of the Agreement is hereby amended to read as follows:

“15. Term. This Agreement shall continue in force until June 30, 2014 unless terminated by BRT or the Advisor as provided herein.”

6. The provision of this Amendment shall be construed and interpreted in accordance with the laws of the State of New York as at the time in effect.
7. This Amendment is effective as of January 1, 2012. The provisions of this Amendment are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision in the Amendment in any jurisdiction.
8. This Amendment shall be binding upon any successors or permitted assigns of the parties hereto as provided in the Agreement subject to the provisions of Section 16 thereof.
9. All terms and conditions of the Agreement, except as modified by this Amendment, are hereby affirmed and ratified.

BRT REALTY TRUST

By: /s/ Jeffrey A. Gould  
Jeffrey A. Gould,  
President and Chief Executive Officer

REIT MANAGEMENT CORP.

By: /s/David W. Kalish  
David W. Kalish, Vice President

**BOND AGREEMENT**

By and Among

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

and

**RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC**

and

**TD BANK, N.A.**  
as Purchaser

Dated as of December 1, 2011

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BOND AGREEMENT

(RBH-TRB East Mezz Urban Renewal Entity, LLC - 2011 Project)

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TABLE OF CONTENTS

---

ARTICLE I

DEFINITIONS

Section 1.01.	Definitions	3
---------------	-------------	---

ARTICLE II

THE FINANCING

Section 2.01.	Opinion of Counsel for the Borrower	16
Section 2.02.	Opinion of Bond Counsel	16
Section 2.03.	Loan and Other Documents	16
Section 2.04.	Legal Matters	17
Section 2.05.	Bond Issuance Fee	17
Section 2.06.	The Loan	17
Section 2.07.	New Markets Tax Credit Financing	17

ARTICLE III

THE BONDS

Section 3.01.	The Bonds	19
Section 3.02.	Transfer of Bonds; Restriction on Transfer	19
Section 3.03.	Execution of Indenture	20
Section 3.04.	Replacement of Mutilated, Destroyed, Lost or Stolen Bonds	21
Section 3.05.	Cancellation of Bonds and Return of Note Upon Payment in Full	21
Section 3.06.	Findings of Authority	21

ARTICLE IV\

THE LOAN

Section 4.01.	The Loan	22
Section 4.02.	The Debt Service Fund	22
Section 4.03.	Security	23
Section 4.04.	Incorporation of Terms	24

Section 4.05.	Payments	24
Section 4.06.	Method of Payment	24
Section 4.07.	Prepayment	24
Section 4.08.	Late Charge	24
Section 4.09.	No Abatement of Payments	24
Section 4.10.	Repair, Restoration and Relocation	25

## ARTICLE V

### ESCROW ACCOUNTS, REBATE ACCOUNT AND ESCROW AGENT

Section 5.01.	Creation of the Loan, Sale of the Bonds, Deposits in the Escrow Account	26
Section 5.02.	Disbursements of Bond Proceeds	26
Section 5.03.	(Intentionally Omitted)	26
Section 5.04.	No Liability of Authority, Purchaser or Agent	26
Section 5.05.	Furnishing Documents to the Authority	26
Section 5.06.	Establishment of Completion Date	27
Section 5.07.	Borrower Required to Pay if Bond Proceeds Are Insufficient	27
Section 5.08.	Debt Service Fund and Escrow Accounts in Event of Default or Cancellation	27
Section 5.09.	Establishment of Rebate Account	28
Section 5.10.	Establishment of the Subsidy Receipt Account	28
Section 5.11.	Duties of the Escrow Agent with Respect to this Bond Agreement	28
Section 5.12.	Resignation of the Escrow Agent	30
Section 5.13.	Removal of the Escrow Agent	30
Section 5.14.	Appointment of Successor Escrow Agent	30
Section 5.15.	Transfer of Rights and Property to Successor Escrow Agent	31
Section 5.16.	Merger or Consolidation	31
Section 5.17.	Conflicts	31

## ARTICLE VI

### REPRESENTATIONS OF THE AUTHORITY

Section 6.01.	Authority Representations	33
Section 6.02.	Designation of Bonds	34
Section 6.03.	Authority Pledge	34

## ARTICLE VII

### REPRESENTATIONS AND DUTIES OF THE PURCHASER

Section 7.01.	Purchaser Representations	35
Section 7.02.	Tax Consequences	35
Section 7.03.	Filing of Other Documents	35
Section 7.04.	Notice of Events of Default	36

## ARTICLE VIII

### REPRESENTATIONS AND WARRANTIES

Section 8.01.	Organization, Powers, etc.	37
Section 8.02.	Execution of Loan Documents	37
Section 8.03.	Title to Collateral	37
Section 8.04.	Litigation	37
Section 8.05.	Payment of Taxes	38
Section 8.06.	No Defaults	38
Section 8.07.	No Material Adverse Change; Financial Statements; and Solvency	38
Section 8.08.	Obligations of the Borrower	38
Section 8.09.	Reserved	38
Section 8.10.	Design of the Project	38
Section 8.11.	Commencement of Project; Proper Charges	39
Section 8.12.	Placement in Service	39
Section 8.13.	Financial Conflicts of Interest	39
Section 8.14.	No Federal Guaranty	39
Section 8.15.	Issuance Costs	39
Section 8.16.	Arbitrage	39
Section 8.17.	Important Inducement	39
Section 8.18.	No Action	39
Section 8.19.	Maturity Limitation	39
Section 8.20.	Expenditure Representation	39
Section 8.21.	Unexpended Bond Proceeds	40

## ARTICLE IX

### COVENANTS OF THE BORROWER

Section 9.01.	Insurance Required	41
Section 9.02.	Payment of Taxes, etc.	41
Section 9.03.	Compliance with Code and Arbitrage Regulations	41
Section 9.04.	Compliance with Applicable Laws	45
Section 9.05.	Environmental Covenant	46
Section 9.06.	Financial Statements	46
Section 9.07.	Mergers, etc.	47
Section 9.08.	Assignment of Bond Agreement	47
Section 9.09.	Indemnification	47
Section 9.10.	Additional Debt; Secondary Financing	49
Section 9.11.	Brokerage Fee	49
Section 9.12.	Additional Covenants Concerning the Collateral	49
Section 9.13.	Borrower Account	51
Section 9.14.	Financial Covenants	51

Section 9.15.	Right to Reappraise	51
Section 9.16.	Change in Location	52
Section 9.17.	Change in Location	52

## ARTICLE X

### BORROWER'S REPRESENTATIONS, WARRANTIES AND COVENANTS TO THE AUTHORITY

Section 10.01.	Inducement	53
Section 10.02.	No Untrue Statements	53
Section 10.03.	Project Users	53
Section 10.04.	Maintain Existence, Merge, Sell, Transfer	53
Section 10.05.	Relocate Project	54
Section 10.06.	Operate Project	54
Section 10.07.	Annual Certification	54
Section 10.08.	Preservation of Project	54
Section 10.09.	Access to the Project and Inspection	55
Section 10.10.	Additional Information	55
Section 10.11.	Project Sign	55
Section 10.12.	Affirmative Action and Prevailing Wage Regulations; Davis-Bacon Compliance	55

## ARTICLE XI

### DEFAULTS AND REMEDIES

Section 11.01.	Event of Default	56
Section 11.02.	Purchaser's Remedies	57
Section 11.03.	Authority's Remedies	60
Section 11.04.	Effect of Cancellation of the Bonds	60
Section 11.05.	No Remedy Exclusive	61
Section 11.06.	Waiver of Event of Default	61
Section 11.07.	Agreement to Pay Attorneys' Fees and Expenses	61
Section 11.08.	Immunity of the Authority	62
Section 11.09.	No Additional Waiver Implied by One Waiver	62

## ARTICLE XII

### MISCELLANEOUS

Section 12.01.	Notice	63
Section 12.02.	Concerning Successors and Assigns; Participations	64
Section 12.03.	Costs and Expenses	64
Section 12.04.	New Jersey Law Governs	64
Section 12.05.	Modification in Writing	64

Section 12.06.	Failure to Exercise Rights	64
Section 12.07.	Assignment of Loan Documents	65
Section 12.08.	Further Assurances and Corrective Instruments	65
Section 12.09.	Authority May Rely on Certificates.	65
Section 12.10.	Captions	65
Section 12.11.	Severability	65
Section 12.12.	Counterparts	65
Section 12.13.	Effective Date and Term	66
Section 12.14.	Application of New Jersey Contractual Liability Act	66
Section 12.15.	Waiver of Jury Trial	66
Exhibit A	Borrower's Completion Certificate	
Exhibit B	Post Issuance Compliance	
Schedule A	Exceptions to Section 8.10	
Schedule B	(Intentionally Omitted)	
Schedule C	Debt Service Schedule	

## **BOND AGREEMENT**

**THIS BOND AGREEMENT** dated as of December 1, 2011 by and among the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (the “Authority”), a public body corporate and politic constituting an instrumentality of the State of New Jersey, **RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC** (the “Borrower”), a New Jersey limited liability company and **TD BANK, N.A.**, a national banking association, organized and existing under the laws of the United States of America (the “Purchaser”).

**WHEREAS**, the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Pamphlet Laws of 1974 of the State of New Jersey, approved on August 7, 1974, as amended and supplemented, (the “Act”) declares it to be in the public interest and to be the policy of the State of New Jersey (the “State”) to foster and promote the economy of the State, increase opportunities for gainful employment and improve living conditions, assist in the economic development or redevelopment of political subdivisions within the State, and otherwise contribute to the prosperity, health and general welfare of the State and its inhabitants by inducing manufacturing, industrial, commercial, recreational, retail, service and other employment promoting enterprises to locate, remain or expand within the State by making available financial assistance; and

**WHEREAS**, the Authority, to accomplish the purposes of the Act, is empowered to extend credit to such employment promoting enterprises in the name of the Authority on such terms and conditions and in such manner as it may deem proper for such consideration and upon such terms and conditions as the Authority may determine to be reasonable; and

**WHEREAS**, RBH-TRB East Mezz Urban Renewal Entity, LLC (the “Applicant”) has applied to the Authority for financial assistance in the principal amount not to exceed \$22,750,000, the proceeds of which will be used by the Borrower in combination with various sources of funding, on or after the date hereof, to facilitate a New Markets Tax Credit financing (the “NMTC Financing”) for the purpose of ultimately making several loans to the QALICB (as defined herein) to provide for the construction of the Charter School Project (as defined below); and

**WHEREAS**, the Charter School Project consists of the construction of that portion of (a) two (2) buildings located on Block 57.05, Lot 3.01 (a.k.a. Building 2); and Block 58, Lot 35.01 (a.k.a. Building 6.1); and (b) a parking lot located on Block 95, Lots 1, 2, 3, 4, 8, 10, 16 and 31 (the “Parking Lot”, together with Building 2 and Building 6.1, the “Parcels”), all on the current official tax map of the City of Newark, County of Essex and State of New Jersey, which will house three (3) charter schools as tenants that will occupy approximately 94,000 square feet (collectively, the “Charter School Project” or “Project”); and

**WHEREAS**, the Authority has, by resolution duly adopted in accordance with the Act on March 3, 2011, accepted the application of the Applicant for assistance in financing the construction of the components of the Charter School Project that will house the charter schools; and

**WHEREAS**, the Authority has granted an allocation of \$9,750,000 of the bond volume cap created under Section 54F of the Code for the issuance of Qualified School Construction Bonds for the benefit of the public schools being funded from its 2010 QSCB allocation; and

**WHEREAS**, the State Superintendent of Schools of the Newark Public Schools has granted an allocation of \$12,998,000 of the bond volume cap created under Section 54F of the Code for the issuance of Qualified School Construction Bonds for the benefit of the public schools being funded from its 2010 QSCB allocation; and

**WHEREAS**, the Authority has by resolution, duly adopted in accordance with the Act on August 25, 2011, authorized the issuance of up to \$22,750,00 of its Qualified School Construction Bonds (as hereinafter further defined); and

**WHEREAS**, the Authority has by resolution, duly adopted in accordance with the Act on November 9, 2011, also authorized a new allocation for the issuance and sale of its Qualified School Construction Bonds (RBH-TRB East Mezz Urban Renewal Entity, LLC — 2011 Project) pursuant to Section 54 F of the Code in the aggregate principal amount of up to \$22,748,000 to be executed, delivered and sold to the Purchaser for the purpose of making a loan to the Borrower in order to finance the Project; and

**WHEREAS**, the execution and delivery of this Bond Agreement have been duly authorized by the parties and all conditions, acts and things necessary and required by the Constitution or statutes of the State or otherwise to exist, to have happened, or to have been performed precedent to or in the execution and delivery of this Bond Agreement do exist, have happened and have been performed; and

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and representations herein, and intending to be legally bound the parties hereto hereby mutually agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01. Definitions. As used herein, the following terms shall have the following meanings unless a different meaning clearly appears from the context:

“Act” shall mean the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Pamphlet Laws of 1974 of the State, approved on August 7, 1974, as amended and supplemented;

“Additional Interest” shall have the meaning set forth in the Note;

“Additional Interest Rate” shall have the meaning set forth in the Note;

“Affiliate” shall mean a Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, a specified Person, except in those cases where the controlling Person exercises control solely in a fiduciary capacity;

“Affirmative Action Requirements” or “Affirmative Action Program” and “Prevailing Wage Requirements”, “Prevailing Wage Provision” means the requirements of the Authority set forth in the Authority Regulations and any other affirmative action and prevailing wage requirements of the Authority from time to time announced, as the same may from time to time be revised, amended or supplemented;

“Agent” shall mean the Bank;

“Application” shall mean the Application for Financial Assistance dated January 21, 2011, directed to the Authority, seeking financial assistance for the Project, and all attachments, exhibits, correspondence and modifications submitted in writing to the Authority in connection with said application;

“Article” shall mean a specified article hereof, unless otherwise indicated;

“Assignment of Contract Licenses and Permits” shall mean that certain Assignment of Contract Licenses and Permits to be dated on or about the Release Date, by and among the Borrower, the QLICB, the Purchaser, CRDA and BCDC;

“Assignment of Ground Lease” shall mean the Assignment of the Ground Lease, if any, dated the Release Date, from the Borrower to the Authority in connection with the Premises, as amended and/or restated from time to time;

“Assignment of Leases and Rents” shall mean that certain Assignment of Leases and Rents, if any, dated the Release Date, from the Borrower, the QALICB, the Purchaser, CRDA

and BCDC to the Authority in connection with the Premises, as amended and/or restated from time to time;

“Authority” shall mean the New Jersey Economic Development Authority, a public body corporate and politic constituting an instrumentality of the State, exercising public and essential governmental functions;

“Authority’s Assignment” shall mean the assignment dated the Closing Date which is made part of the Record of Proceedings, wherein the Authority assigns to the Purchaser its right, title and interest in and to the Note and the Bond Agreement and pledges the revenues payable to the Authority in connection with the Project, and as the same may be amended and restated to assign to the Purchaser the Authority’s right, title and interest in and to the other Loan Documents to which the Authority is a party (in each case subject to the Authority’s Reserved Rights);

“Authorized Authority Representative” shall mean any individual or individuals duly authorized by the Resolution and the by-laws of the Authority to act on its behalf;

“Authorized Borrower Representative” shall mean any individual or individuals duly authorized by the Borrower to act on its behalf;

“Authorized Purchaser Representative” shall mean any individual or individuals duly authorized by the Purchaser to act on its behalf;

“Available Project Proceeds” means (i) Sale Proceeds (as defined in Section 1.148-1 of the Regulations and further described below) less Issuance Expenses of the Bonds plus (ii) Investment Proceeds (as defined in Section 1.148-1 of the Regulations and further described below). Sale Proceeds are defined as amounts actually or constructively received from the sale of Qualified School Construction Bonds. For these purposes, Investment Proceeds means any amounts actually or constructively received from the investment of (i) above;

“Bank” shall mean TD Bank, N.A., and/or its successors and assigns;

“BCDC shall mean the Brick City Development Corporation, a New Jersey corporation;

“Bond” or “Bonds” shall mean the Qualified School Construction Bonds (RBH-TRB East Mezz Urban Renewal Entity, LLC - 2011 Project) issued hereunder in the aggregate principal amount of \$22,748,000 dated the Closing Date;

“Bond Agreement” shall mean this Bond Agreement;

“Bond Counsel” shall mean the law firm of Wolff & Samson PC, One Boland Drive, West Orange, New Jersey or any other attorney-at-law or firm of attorneys (other than an employee of the Borrower but including any law firm serving as counsel to the Borrower) satisfactory to the Purchaser and the Authority and nationally recognized as experienced in

matters relating to the tax exemption of interest on bonds of states and political subdivisions as well as tax credit bonds;

“Bond Proceeds” shall mean the amount paid to the Authority by the Purchaser as the purchase price of the Bonds, which shall be limited to \$22,748,000, together with interest income earned thereon, if any;

“Bond Year” when used in the context of the rebate requirement imposed under Section 148(f) of the Code means, with respect to the first Bond Year, the period beginning on the date of issuance of the Bonds, i.e., the date of initial delivery of the Bonds in exchange for the issue price from the Purchaser, and ending on the date one (1) year later or the close of business of such earlier date selected by the Authority at the direction of the Borrower which is the last day of a compounding interval used in computing the Yield on the Bonds. Each subsequent Bond Year begins on the day after the expiration of the preceding Bond Year;

“Borrower” shall mean RBH-TRB East Mezz Urban Renewal Entity, LLC, a New Jersey urban renewal limited liability company validly existing and in good standing under the laws of the State of New Jersey and authorized to do business under the laws of the State;

“Borrower Account” shall mean the bank account to be established by the Borrower with the Purchaser pursuant to Section 9.13;

“Borrower’s Completion Certificate” shall mean the certificate described in Section 5.06, executed by the Borrower acceptable to the Authority, wherein the Borrower certifies as to such matters as the Authority shall require which shall be in the form annexed hereto as Exhibit A;

“Building Loan Agreement” shall mean that certain Building Loan Agreement to be dated on or about the Release Date, by and among the QLICB, the CDE’s, as Lenders, and the Bank, as Administrative Agent that, among other things, contains the provisions governing the use of the QLICI Loan (as defined therein) and the provisions related to the construction of the Project;

“Building 2” shall mean a building of approximately 92,652 sq. ft. to be constructed on Lot 3.01 in Block 57.05, a portion of which is to house TEAM Academy and Discovery Charter School;

“Building 6.1 Escrow Account” shall mean the account, established under the Master Escrow Deposit Agreement, into which a portion of the Bond Proceeds will be deposited on the Release Date;

“Building 6.1” shall mean a building of approximately 40,920 sq. ft. to be constructed on Lot 35.01 in Block 58, a portion of which is to house Great Oaks Charter School, and another tenant, the CHEN School;

“Business Day” shall mean any day other than (i) Saturday or Sunday or, (ii) a day on which commercial banks in New Jersey, or the city in which is located the principal office of the Purchaser are authorized by law or executive order to close;

“Cancellation Date” shall have the meaning specified therefor in Section 11.03;

“CDE’s” shall mean, collectively, NJCC Sub-CDE and Pru Sub-CDE;

“Cash Management Agreement” shall mean that certain Cash Management Agreement to be dated on or about the Release Date by and among the Borrower, the QLICB, the Bank, CRDA, BCDC, the CDE’s, GS Halsey NMTC Investment Fund LLC, and T.D. Bank, N.A., as administrative agent;

“Closing Date” shall mean December 29, 2011;

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder from time to time in effect;

“Collateral” shall mean the real and personal property subject to the lien of the Mortgage, including without limitation all fixtures, equipment and all other assets of the Borrower used or to be used in connection with the Premises, each of the Guaranties, the Ground Lease, and the funds in all the accounts created hereunder (except the Rebate Account);

“Collateral Assignment” shall mean that certain Collateral Assignment of Leveraged Loan Documents dated on or about the Release Date by the Borrower in favor of the Purchaser;

“Collateral Pledge Agreement” shall mean that certain Collateral Pledge Agreement to be dated on or about the Release Date by RBH-TRB East Mezz, LLC in favor of the Purchaser;

“Community Development Block Grant Program” shall mean the grant program administered through the U.S. Department of Housing and Urban Development for purposes of benefiting undertakings such as the development project of which the Project is a part;

“Community Development Block Grant Loan” shall mean the loan made by the Bank in favor of the Borrower in the amount of \$2,000,000, which will be repaid with anticipated grant proceeds from the Community Development Block Grant Program;

“Community Development Block Grant Loan Documents” shall mean the loan agreement, mortgage and security agreement, mortgage loan note and the deposit account security agreement, all by the Borrower in favor of the Bank with respect to the Community Development Block Grant Loan, and all other documents and instruments executed by the Borrower or its Affiliates in connection therewith and delivered to the Bank;

“Completion Date” shall mean the date of completion of the Project as stated in the Borrower’s Completion Certificate described in Section 5.06;

“Construction Contract” shall mean, for purposes of the Prevailing Wage Provision, any contract or subcontract in the amount of \$2,000 or more for construction, reconstruction, demolition, alteration, repair, or maintenance work, including painting and decorating,

undertaken in connection with the initial construction of the Premises and shall mean, for purposes of the Affirmative Action Program and/or any other purpose, any contract or subcontract for construction, reconstruction, renovation or rehabilitation undertaken in connection with the initial construction of the Premises;

“Contractor” shall mean the principal or general contractor or contractors engaged by the Borrower in the performance of a Construction Contract; “Counsel for the Borrower” shall mean the law firm of McManimon & Scotland, LLC, Newark, New Jersey;

“Counsel for the Purchaser” shall mean the law firm of Windels, Marx, Lane & Mittendorf, New Brunswick, New Jersey;

“CRDA” shall mean the Casino Reinvestment Development Authority, a public body established in, but not of, the Department of the Treasury of the State of New Jersey, and existing under and by virtue of the laws of the State of New Jersey;

“Debt Service” shall mean the scheduled amount of interest and amortization of principal payable for any Bond Year with respect to the Bonds;

“Debt Service Fund” shall mean the fund established pursuant to Section 4.02 hereof;

“Debt Service Schedule” shall mean the schedule of debt service due on the Note and the Bonds as set forth in Schedule C hereto;

“Debt Service Subsidy Payment” shall mean the Federal cash subsidy payment paid by the United States Treasury Department to the Authority on each Interest Payment Date equal to 100% of the interest payable on each Interest Payment Date up to the applicable tax credit rate of 4.99%;

“Default Rate” shall mean the rate equal to four (4%) percent per annum above the interest rate prevailing on the Note;

“Deposit Account Security Agreement” shall mean that certain Deposit Account Security Agreement to be dated on or about the Release Date, by and between the Guarantor and the Purchaser;

“Determination of Ineligibility” shall occur upon receipt by the Authority of a proposed adverse determination by the IRS with respect to Qualified School Construction Bonds, or receipt by the Holder of Qualified School Construction Bonds or the Trustee of a statutory notice of deficiency by the IRS, a ruling from the National Office of the IRS, or a final decision of a court of competent jurisdiction which holds in effect that the requirements under the Code relating to Qualified School Construction Bonds have been violated or not satisfied because of any act or omission of the Borrower (or any successor or transferee); provided, however, that the Borrower shall have an opportunity for no more than one hundred (100) days after receipt by the Authority to initiate an appeal of any such statutory notice, ruling or final decision and that no such statutory notice, ruling or final decision shall be deemed a “Determination of Ineligibility”

if the Borrower is appealing the same during such one hundred (100) day period in good faith until the earliest of (a) abandonment of the appeals process by the Borrower, (b) the date on which such appeals process has been concluded adversely to the Borrower and no further appeals are possible, or (c) twelve (12) months after the initial receipt by the Trustee of such statutory notice, ruling or final decision;

“Disbursement Account” shall mean the fund established under the Intercreditor Agreement for the disbursement of funds for the construction of the Project;

“Environmental Insurance Policy” shall mean the policy of insurance issued on or about the Release Date by Greenwich Insurance Company in favor of the Purchaser, the Bank, the Authority and other parties or any policy issued in substitution therefor, providing substantially similar coverage;

“ERISA” shall mean the federal Employee Retirement Income Security Act;

“Escrow Account” shall mean the special account entitled “N.J.E.D.A. - RBH-TRB East Mezz Urban Renewal Entity, LLC Project Escrow Account” maintained by the Escrow Agent at its offices and established for the deposit of the Bond Proceeds;

“Event” shall have the meaning given to such term in Section 4.10;

“Event of Default” shall mean any event of default as defined in Section 11.01;

“Extraordinary Event” shall be deemed to have occurred if a material adverse change has occurred to Section 54F or Section 6431 of the Code pursuant to which the Debt Service Subsidy Payments are reduced or eliminated;

“Financing Statements” shall mean the Uniform Commercial Code Financing Statements which are made part of the Record of Proceedings, authorized by the Borrower, as Debtor;

“Future Value” means, with respect to any payment or receipt paid or received on any date (or treated as paid or received), the value of the payment or receipt on that date increased by interest assumed to be earned and compounded at the end of each compounding interval over any specified future period using a compounding rate equal to the Yield on the Bonds and the compounding interval and financial conventions used to compute Yield on the Bonds;

“GAAP” or “Generally Accepted Accounting Principles” shall mean those principles of accounting set forth in pronouncements of the Financial Accounting Standard Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants or those principles of accounting which have other substantial authoritative support and are applicable in the circumstances as of the date of application, as such principles are from time to time supplemented or amended;

“General Certificate of the Authority” shall mean the certificate of the Authority which is made a part of the Record of Proceedings;

“Gross Proceeds” shall have the meaning given it in Section 148(f)(6)(b) of the Code, presently including, without limitation, the original Bond Proceeds, investment proceeds, amounts held in a sinking fund, amounts invested in a Reasonably Required Reserve or Replacement Fund (as defined in Section 148(d) of the Code), any amounts used to pay Debt Service on the Bonds and any amounts received as a result of investing any of the foregoing. Gross Proceeds shall not include Gross Proceeds held in a bona fide Debt Service fund to the extent that the earnings on such fund do not exceed \$100,000 in any one Bond Year;

“Ground Lease” shall mean the Ground Lease dated the Release Date, by and between the Borrower and QALICB;

“Guarantor” shall mean RBH-TRB Newark Holdings, Limited Liability Company, a New Jersey limited liability company, and an Affiliate of the Borrower;

“Guaranty” shall mean the Guaranty of Payment executed by the Guarantor in favor of the Purchaser and dated on or about the Release Date;

“Hedging Agreements” shall mean any and all derivative, interest or currency swap, fixture, option or other interest rate protection or similar agreements, devices or arrangements with the Purchaser designed to protect the Borrower from the fluctuations of interest rates, applicable to the Note, including, but not limited to, dollar-denominated or cross-currency interest rate exchange agreements, forward currency exchange agreements, interest rate cap or collar protection agreements, forward rate currency or interest rate options, puts and warrants or any similar derivative transactions;

The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof”, and any similar terms, refer to this Bond Agreement; the term “heretofore” means before the date of execution of this Bond Agreement; and the term “hereafter” means after the date of execution of this Bond Agreement;

“Holder” shall mean initially, the Purchaser or each other Person to whom the Bond is transferred pursuant to Section 3.02 or, if there is an Indenture, the Holders of the Indentured Bonds, as provided in the Indenture;

“Indebtedness” shall mean (i) all items (other than capital stock, capital surplus, retained earnings and general contingencies) which in accordance with GAAP would be included in determining total liabilities as shown on the liability side of a balance sheet as at the date on which Indebtedness is to be determined; and (ii) whether or not so reflected, all indebtedness, obligations and liabilities, whether unsecured or secured by any lien, and all capitalized lease obligations;

“Indemnified Parties” shall mean the State, the Authority, the Purchaser, the Agent, any Person who “controls” the State, the Authority, the Purchaser or the Agent within the meaning of Section 15 of the Securities Act of 1933, as amended, and any member, director, officer, official, employee or attorney of the Authority, the State, the Agent or the Purchaser;

“Indenture” shall have the meaning specified therefor in Section 3.03;

“Indentured Bonds” shall have the meaning specified therefor in Section 3.03;

“Initial Leverage Loan QSCB Account” shall mean the account, established under the Master Escrow Deposit Agreement, into which a portion of the Bond Proceeds will be deposited on the Release Date;

“Interest Account” shall mean the account so named within the Debt Service Fund established pursuant to Section 4.02 hereof;

“Interest Payment Date” shall mean (i) for the payment of Subsidy Interest, the first Business Day of each January, April, July and October in each year or the earlier redemption date of the Bonds and (ii) for payment of Additional Interest, the first Business Day of each month;

“Intercreditor Agreement” shall mean the Intercreditor Agreement to be dated on or about the Release Date by and among the Borrower, the QALICB, the Purchaser, CRDA, BCDC, the CDE’s and Goldman Sachs;

“Investment Obligations” shall mean any of the following: (a) obligations of or guaranteed by the State or the United States of America; (b) obligations of or guaranteed by any instrumentality or agency of the United States of America, whether now existing or hereafter organized; (c) obligations of or guaranteed by any state of the United States or the District of Columbia; (d) repurchase agreements fully secured by obligations of the kind specified in (a), (b) or (c) above; (e) interest-bearing deposits in the Agent or any other bank or trust company which has combined capital, surplus and undivided profits of at least \$50,000,000; (f) commercial paper with one of the two highest ratings from a nationally accepted rating service; and (g) a fund made up of United States Treasury securities;

“Issuance Expense” shall have the meaning set forth in Section 54A of the Code;

“Letter of Credit” shall mean the Standby Letter of Credit issued by the Bank in favor of the City of Newark to secure the undertaking of certain site improvements in the area of the Project for the benefit of the Borrower and the Project;

“Loan” shall mean the loan from the Authority to the Borrower in the aggregate principal amount of \$22,748,000, which is being made under the terms and conditions provided for herein and in the manner set forth in Section 2.06 hereof;

“Loan Documents” shall mean any or all of this Bond Agreement, the Note, the Mortgage, the Assignment of the Ground Lease, the Financing Statements, the Authority’s Assignment, the Assignment of Leases and Rents, the Guaranties, the Master Escrow Deposit Agreement, the Assignment of Contract Licenses and Permits, the Deposit Account Security Agreement, the Collateral Pledge Agreement, the Rent Guaranty and all documents and

instruments executed by the Borrower or its Affiliates in connection with the Loan and delivered to the Authority and/or the Purchaser;

“Master Escrow Agent” shall mean the Escrow Agent named and appointed under the Master Escrow Deposit Agreement;

“Master Escrow Deposit Agreement” shall mean the Master Escrow Deposit Agreement to be dated on or about the Release Date by and among the Debtors (as defined therein) and the Lenders (as defined therein) for the construction of Building 2, Building 6.1 and the Parking Lot;

“Master Escrow Fund” shall mean the special fund established under the Master Escrow Deposit Agreement;

“Maturity Date” shall mean the maturity date of the Bonds as set forth therein;

“Mortgage” shall mean the Mortgage and Security Agreement to be dated on or about the Release Date, which is made part of the Record of Proceedings, from the Borrower to the Authority, creating a lien upon the Borrower’s interest in the Premises and certain other collateral as described therein;

“Net Proceeds” shall mean the Bond Proceeds less 2% costs of issuance;

“NJCC Sub-CDE” shall mean NJCC CDE Essex, LLC, a New Jersey limited liability company and a community development entity;

“Non-Purpose Obligations” shall mean any “investment property” (within the meaning of Section 148(b)(2) of the Code) which is (i) acquired with the Gross Proceeds of the Bonds and (ii) not acquired in order to carry out the governmental purpose of the Bonds;

“Note” shall mean the Note dated the Closing Date, from the Borrower to the Authority in the aggregate principal amount of \$22,748,000;

“Obligations” shall mean the obligations of the Borrower created pursuant to the Loan Documents and or any Hedging Agreement, which are secured by the Collateral;

“Paragraph” shall mean a specified paragraph of a Section, unless otherwise indicated;

“Permitted Encumbrances” shall mean, as of any particular time: (i) liens for taxes and assessments not then delinquent or which are being contested in good faith and for which adequate reserves have been deposited with the Purchaser; (ii) the liens created by this Bond Agreement, the Mortgage, the Assignment of Ground Lease, and the other Loan Documents (subject to the terms of the Intercreditor Agreement); (iii) any lien in favor of the Purchaser arising out of any Other Obligations (as defined in the Mortgage); (iv) utility access and other easements and rights-of-way, restrictions and exceptions that are reflected in the title commitment delivered by the Borrower on or about the Release Date; (v) subordinate liens securing the Permitted Indebtedness, (vi) the leases with the QALICB and Proposed Tenants

with respect to the Premises, as described in the Borrower's Affidavit of Title to be dated on or about the Release Date, and (vii) all other liens and encumbrances expressly permitted under this Bond Agreement and the other Loan Documents;

"Permitted Indebtedness" shall mean (i) the CRDA loan to the Borrower; (ii) the BCDC loan to the Borrower; (iii) the Community Development Block Grant Loan; (iv) the Redevelopment Area Bond issue of the Authority in the aggregate amount of up to \$5,265,000 for the benefit of the Borrower and its Affiliates (v) with respect to the portion of the Premises which are not part of the Charter School Project, the leases to the retail tenants and the Chen School and (vi) other indebtedness that may be agreed to by the Purchaser prior to the Release Date;

"Person" or "Persons" shall mean any individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a governmental agency or any political subdivision thereof;

"Premises" shall mean the premises located at 230 Halsey Street and 24 Maiden Lane, Newark, New Jersey, which will be more particularly described in and subject to the Mortgage and the Assignment of Ground Lease, together with all improvements thereon;

"Prevailing Wage Act" means the New Jersey Prevailing Wage Act P.L. 1983, c.530, as amended by P.L. 2004, c. 127, (N.J.S.A. 34:11-56.25 et seq.), as the same may be amended from time to time;

"Prevailing Wage Rate" shall mean the greater of the prevailing wage rate established by the Commissioner of the New Jersey Department of Labor and Workforce Development from time to time in accordance with the provisions of N.J.S.A. 34:11-56.30 for the locality in which the Project is located or the prevailing wage rate established under the Davis-Bacon Act;

"Project" or "Charter School Project" shall have the meaning set in the preambles to this Agreement;

"Project Documents" means the documents to which the Bank and/or the Borrower is a party, in various capacities, with respect to the Project, including, but not limited to, the Ground Lease, the Intercreditor Agreement, the Cash Management Agreement, the Master Escrow Deposit Agreement, the Collateral Assignment, the Reimbursement Agreement, the Community Development Block Grant Loan Documents and the documents evidencing the Permitted Indebtedness;

"Project Municipality" shall mean the City of Newark, County of Essex, in the State of New Jersey;

"Proper Charge" shall mean: (i) Issuance Expense, which shall at no time exceed two per centum (2%) of the proceeds of the Bonds; and (ii) amounts necessary to pay accrued interest to the date of payment, or an expenditure for the Project paid and incurred after the date which is

sixty days prior to March 8, 2011, the date the Authority adopted its official intent to reimburse, which are used for the acquisition, construction, reconstruction of a public school facility;

“Proposed Tenants” shall mean Team Academy Charter School, Discovery Charter School, Great Oaks Charter School and CHEN School;

“Pru Sub-CDE” shall mean Gateway Sub-CDE I, LLC, a Delaware limited liability company, and a community development entity;

“Public School Facilities” shall mean those portions of Building 2 and Building 6.1 funded with the proceeds of the Bond which will house the public schools;

“Purchaser” shall mean TD Bank, N.A., 317 Madison Avenue, New York, New York 10017 and its successors and/or assigns;

“QALICB” shall mean Teachers Village School QALICB Urban Renewal, LLC;

“QSCB” shall mean Qualified School Construction Bonds, as authorized by Section 54F of the Code;

“Rebate Account” shall mean the special account maintained by the Agent at its offices and established for the deposit of the amounts to be paid to the United States on behalf of the Authority pursuant to Section 9.03, as described in Section 5.09 hereof;

“Rebate Amount” shall have the meaning set forth in Section 9.03(f) of this Bond Agreement;

“Rebate Expert” means any of the following chosen by the Borrower and acceptable to the Purchaser: (a) Bond Counsel, (b) any nationally recognized firm of certified public accountants, (c) any reputable firm which offers to the tax-exempt/tax-credit bond industry rebate calculation services and holds itself out as having expertise in that area, or (d) such other Person as is approved by Bond Counsel, which may include counsel to the Borrower;

“Record of Proceedings” shall mean the Loan Documents, certificates, affidavits, opinions and other documentation executed in connection with the sale of the Bonds to the Purchaser and the making of the Loan;

“Reimbursement Agreement” shall mean the Letter of Credit and Reimbursement Agreement by and between the Borrower and the Bank dated the Release Date that sets forth the Borrower’s obligations to reimburse the Bank for any drawings under the Letter of Credit;

“Release Date” shall have the meaning set forth in Section 2.07 hereof;

“Rent Guarantor” shall mean New Jersey Community Capital;

“Rent Guaranty” shall mean the rent guaranty, to be dated on or about the Release Date which is made a part of the Record of Proceedings, executed by the Rent Guarantor guarantying certain rent payments due to the QALICB from the charter school tenants;

“Reserved Rights” means the rights of the Authority to receive notices under this Bond Agreement or any other Loan Document to which it is a party, to consent to any amendments, modifications or supplements to this Bond Agreement or any other Loan Document to which it is a party, to enforce pursuant to Article XI hereof the remedies of the Authority herein and to enforce and enjoy the benefits of the covenants or other provisions under the following Sections of this Bond Agreement: 5.02 (Disbursements from the Escrow Accounts), 5.04 (No Liability of Authority or Agent), 5.05 (Furnishing Documents to the Authority), 5.09 (Establishment of Rebate Account), 5.12 (Duties of the Agent), 7.01 (Purchaser Representations), 7.03 (Filing of Other Documents), 7.04 (Notice of Events of Default), 8.22 (No Action), 9.01 (Insurance Required), 9.03 (Compliance with Code and Arbitrage Regulations), 9.05 (Environmental Covenant), 9.06 (Financial Statements), 9.07 (Mergers, etc.), 9.08 (Assignment of Bond Agreement), 9.09 (Indemnification), 9.12 (Brokerage Fee), 10.01 (Inducement), 10.02 (No Untrue Statements), 10.03 (Project Users), 10.04 (Maintain Existence, Merge, Sell, Transfer), 10.05 (Relocate Project), 10.06 (Operate Project), 10.07 (Annual Certification), 10.08 (Preservation of Project), 10.09 (Access to the Project and Inspection), 10.10 (Additional Information), 10.11 (Project Sign), 10.12 (Religious Considerations), 10.13 (Affirmative Action and Prevailing Wage Regulations), 11.01 (Events of Default), 11.03 (Authority’s Remedies), 11.04 (Effect of Cancellation of the Bonds), 11.05 (No Remedy Exclusive), 11.06 (Waiver of Event of Default), 11.07 (Agreement to Pay Attorneys’ Fees and Expenses), 11.08 (Immunity of Authority), 12.03 (Costs and Expenses), 12.06 (Failure to Exercise Rights), 12.07 (Assignment of Loan Documents), 12.08 (Further Assurances and Corrective Instruments) and 12.09 (Authority May Rely On Certificates). These Reserved Rights have been assigned to the Purchaser but are also held and retained by the Authority concurrently with the Purchaser and may be exercised and enforced whether or not the Purchaser shall have exercised or shall have purported to exercise such rights and remedies, without limiting the obligation of the Purchaser to do so;

“Residential Loan” shall mean a financial closing sufficient to provide for the construction of 121 residential units in connection with the Residential Project, the terms of which shall be acceptable to the Purchaser in its reasonable discretion;

“Residential Project” shall mean, collectively, Workforce Housing A and Workforce Housing B;

“Resolution” shall collectively mean the resolution of the Authority dated March 8, 2011 accepting the Application, making certain findings and determinations, the resolution dated August 25, 2011 authorizing the issuance and sale of the Bonds and determining other matters in connection with the Project, and the resolution dated November 9, 2011 authorizing a new allocation for the Project;

“Section” shall mean a specified section hereof, unless otherwise indicated;

“Sinking Fund Account” shall mean the account so named within the Debt Service Fund established pursuant to Section 4.02 hereof;

“State” shall mean the State of New Jersey;

“Subsidy Interest” shall have the meaning set forth in the Note;

“Subsidy Interest Payment Date” means the first Business Day of each January, April, July, and October, of each year until the Maturity Date commencing April 1, 2012;

“Subsidy Interest Rate” shall have the meaning set forth in the Note;

“Subsidy Receipt Account” shall mean the special account maintained by the Agent at its offices and established for the deposit of the amounts received from the United States Treasury Department as Debt Service Subsidy Payments as set forth in Section 5.10 hereof;

“Tax Certificate” shall mean the certificate executed by an Authorized Borrower Representative or the Borrower’s accountants in form and substance acceptable to the Authority, wherein the Borrower certifies as to such matters as the Authority shall require;

“Tax Event” shall mean an act or event set forth on Exhibit B attached hereto;

“Workforce Housing A” shall mean a project consisting of five (5) buildings which will provide approximately 165 residential rental housing units and approximately 35,000 square feet of rentable retail space to be built in the City of Newark;

“Workforce Housing B” shall mean a project consisting of one (1) building which will provide approximately 40 residential rental units and approximately 2,500 square feet of rentable retail space to be built in the City of Newark;

“Yield” shall mean a yield as shall be determined under Section 1.103-13(c) of the Regulations and Section 1.148-3 of the Regulations, as applicable;

**ARTICLE II**  
**THE FINANCING**

The Authority's obligations to make the Loan and issue the Bonds and the Purchaser's obligation to purchase the Bond and deliver the purchase price to the Agent are subject to the following conditions precedent:

Section 2.01. Opinion of Counsel for the Borrower. The Authority and the Purchaser shall have received the opinion of Counsel for the Borrower dated the date of the Loan, addressed to the Authority and the Purchaser, and satisfactory in form and substance to the Authority, Bond Counsel and Counsel for the Purchaser.

Section 2.02. Opinion of Bond Counsel. The Authority, the Purchaser and the Borrower shall have received the opinion of Bond Counsel, addressed to the Authority and the Purchaser, to the effect that:

(a) the Bonds are "qualified school construction bonds" within the meaning of Section 54F of the Internal Revenue Code of 1986, as amended (the "Code"). On each Interest Payment Date the Authority shall be entitled to receive refundable tax credit in the form of cash subsidy payments from the United States Treasury equal to 100% of the interest payable on the Bonds on each Interest Payment Date for the Bonds pursuant to Section 54F of the Code and Section 6431 of the Code up to the applicable tax credit rate (as such term is defined in the Code). Interest on the Bonds will be taxable as ordinary income for federal income tax purposes. Bond counsel expresses no opinion regarding other tax consequences related to the ownership or disposition of, or the receipt of federal tax credits or the accrual or receipt of interest (or deemed interest) with respect to, the Bonds;

(b) interest income is not includable as gross income under the New Jersey Gross Income Tax Act (P.L. 1976, Chapter 47);

(c) the offering of the Bonds is not required to be registered under the Securities Act of 1933, as amended, or under the rules and regulations promulgated thereunder; and

(d) the Bonds have been duly authorized and issued under the provisions of the Act.

Section 2.03. Loan and Other Documents. The Authority and the Purchaser shall have received:

(a) the Loan Documents to the extent the same are dated the Closing Date, duly executed by all parties thereto;

(b) the Tax Certificate, in form and substance satisfactory to Bond Counsel;

- (c) leases or subleases with the Proposed Tenants;
- (d) all other documents reasonably required by the Authority and the Purchaser.

Section 2.04. Legal Matters. Legal matters in connection with the making of the Loan shall be satisfactory to the Authority, the Purchaser, the Borrower and their respective counsel.

Section 2.05. Bond Issuance Fee. The Authority shall have received from the Borrower the bond issuance fee of \$52,027.50 and the Purchaser shall have received from the Borrower its commitment fee of \$341,220 (less any amount thereof prepaid by the Borrower).

Section 2.06. The Loan. The following acts will occur simultaneously and concurrently on the Closing Date with the execution and delivery of this Bond Agreement and all of the other Loan Documents:

- (i) The Authority will sell, issue and deliver the Bonds to the Purchaser;
- (ii) The Purchaser shall deposit the purchase price of the Bonds, \$22,748,000, in the Escrow Account;
- (iii) The Borrower will execute and deliver the Bond Agreement, the Note and the Authority's Assignment to the Authority and the Purchaser and establishes the various funds and account required by this Bond Agreement with the Purchaser;
- (iv) The Borrower shall deposit immediately available funds in the Interest Account of the Debt Service Fund in an amount comprising the amount of interest payable on the Bonds on January 31, 2012;
- (v) The Authority will assign the Bond Agreement and the Note to the Purchaser in accordance with the Authority's Assignment.

Section 2.07. New Markets Tax Credit Financing. (a) The parties hereto acknowledge that the Bond Proceeds will be released from the Escrow Account only upon the closing of the NMTC Financing, which is anticipated to occur prior to January 31, 2012 whereupon the Bond Proceeds will be used to fund a series of loans with the result that an amount equal to the par amount of the Bonds shall be deposited initially into the Master Escrow Fund established under the Master Escrow Deposit Agreement to fund the above mentioned series of loans and ultimately to be deposited into the Disbursement Account under the Intercreditor Agreement, the proceeds of which will be used for the acquisition and construction of the portions of the Parking Lot and Building 2 and Building 6.1 that will service and house the three charter school tenants as well as to fund certain reserve accounts and to pay costs of issuance. The other portions of Building 2 and Building 6.1 not used for the Charter Schools will be financed from funds other than those initially derived from the Bonds. Except as otherwise noted, any reference herein to "Bond Proceeds" shall refer to such funds as are deposited in the Disbursement Account. The

Bond Proceeds shall be segregated from the other funds borrowed to fund the Project and shall be traced from issuance through the various funds and accounts until actually expended to construct the Charter School Project. The Bond Proceeds shall not be released from the Escrow Account until the Purchaser is satisfied, in its sole discretion, that all of the conditions to the closing of the NMTC Transaction have been met, including without limitation receipt of the following by the Purchaser and the Authority, all in form and substance acceptable to the Purchaser and the Authority (the "Release Date"):

- (i) All of the other Loan Documents not previously delivered, the Project Documents dated on or about the Release Date and a title insurance policy with respect to the Mortgage in favor of the Authority and the Purchaser and in the amount of the principal amount of the Bonds;
- (ii) all documents and instruments executed by the Borrower, the QALICB or their Affiliates in connection with the NMTC Financing and the Building Loan Agreement (the "NMTC Documents"), together with all legal opinions required to be delivered in connection therewith;
- (iii) opinions of counsel to the parties to the Loan Documents, the Project Documents and the NMTC Documents and all other due diligence required by the Loan Documents, Project Documents or the NMTC Documents, including, but not limited to, the Environmental Insurance Policy;
- (iv) an Amended and Restated Authority's Assignment, assigning the other Loan Documents to the Purchaser;
- (v) certificates, in form and substance acceptable to the Authority and the Purchaser, evidencing the insurance required to be maintained by Section 9.01 hereof and the Mortgage;
- (vi) an opinion of Bond Counsel as to the enforceability against the Authority of the Amended and Restated Authority's Assignment set forth in (iv) above; and
- (vii) proof satisfactory to the Purchaser, in its sole discretion, that the Borrower and its sole member are each a single purpose entity.

(b) If the Release Date has not occurred on or before January 31, 2012, the Bonds will be subject to optional tender by the Purchaser as set forth in the Note.

## ARTICLE III

### THE BONDS

Section 3.01. The Bonds. **The State of New Jersey is not obligated to pay, and neither the faith and credit nor taxing power of the State of New Jersey is pledged to the payment of, the principal or redemption price, if any, of or interest on the Bonds. The Bonds are a special, limited obligation of the Authority, payable solely out of the revenues or other receipts, funds or moneys payable hereunder to the Authority and from any amounts otherwise available hereunder for the payment of the Bonds. The Bonds do not now and shall never constitute a charge against the general credit of the Authority. The Authority has no taxing power.**

Pursuant to the Act, neither the members of the Authority nor any Person executing bonds for the Authority shall be liable personally on said bonds by reason of the issuance thereof.

Subject to the terms and conditions and upon the basis of the representations hereinafter set forth, the Authority hereby agrees to sell the Bonds to the Purchaser, and the Purchaser hereby agrees to purchase the Bonds from the Authority and to deposit the purchase price thereof in the Escrow Account.

The Bonds shall be issued in typewritten form as a registered Bond without coupons. The Bonds shall be signed by or executed with the manual or facsimile signature of the members or officers of the Authority authorized to execute the Bonds pursuant to the Resolution and the official seal or a facsimile thereof of the Authority shall be impressed thereon and attested by the manual or facsimile signature of the Authorized Authority Representatives. Payment for the Bonds by the Purchaser and delivery thereof by the Authority shall be made at the offices of the Authority in Trenton, New Jersey or at such other place as the Authority and Purchaser mutually agree.

The offering of the Bonds has not been registered under the Securities Act of 1933, as amended, and this Bond Agreement has not been qualified under the Trust Indenture Act of 1939, as amended. The Bonds may not be offered or sold by the Purchaser in contravention of said acts.

Section 3.02. Transfer of Bonds; Restriction on Transfer. The Bonds shall be transferable only upon the records of the Authority maintained by the Authority at the principal office of the Authority by a Holder in person or by its attorney duly authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Authority and duly executed by the Holder or its duly authorized attorney. No transfer of the Bonds shall be valid unless (i) made on such books and similarly noted by endorsement of the Holder on the Bonds or, at the expense of the Holder, the Authority shall execute and deliver a new Bond registered in the name of the transferee; and (ii) the Holder requesting the transfer shall assign to the transferee all of the rights of the Authority assigned to the Holder pursuant to Section 12.07

and the Authority's Assignment and, in that connection, will execute and deliver all such instruments and documents as may be deemed necessary or appropriate by counsel for the Authority and by such independent counsel as shall be designated by the Holder. Notwithstanding any other provision of this Bond Agreement or any other Loan Document, the Bonds shall be transferable only as a whole to a single purchaser and may not be transferred in part except after full compliance with the provisions of this Article III.

Section 3.03. Execution of Indenture. (a) If the Holder at any time proposes to sell, pledge, assign or otherwise transfer the Bonds so that thereafter there will be or may be more than one Holder, the Authority will, as soon as reasonably possible after the receipt of a written request from the Holder, execute and deliver to a bank or trust company, as trustee, having a capital and surplus of at least ten million dollars (\$10,000,000) (if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms), an Indenture of Trust (the "Indenture"), providing for the execution and delivery thereunder of new Qualified School Construction Bonds (RBH-TRB East Mezz Urban Renewal Entity, LLC - 2011 Project) of the Authority (herein called the "Indentured Bonds"), equal in aggregate principal amount to the outstanding and unpaid principal amount of the Bonds at the time of such authorization and in all other respects substantially similar to, and having substantially all the rights and privileges carried by, the Bonds.

(b) Any action taken by the Authority pursuant to this Section 3.03 shall be taken by the Authority as soon as practicable (as determined by the Authority) after such written request from the Holder; provided however, no such action under this Section 3.03 shall be taken (i) without the approval of counsel chosen by the Authority, (ii) without an approving legal opinion of Bond Counsel and (iii) if it shall constitute an Event of Default.

(c) In connection with the execution of the Indenture, the Holder shall assign to the trustee under the Indenture, to be held by such trustee for the benefit of all the Holders of the Indentured Bonds, all of the rights of the Authority assigned to such Holder pursuant to Section 12.07 and the Authority's Assignment and, in that connection, will execute and deliver all such instruments and documents as may be deemed necessary or appropriate by counsel for the Authority and by such independent counsel as shall be designated by such Holder. The terms and provisions of the Indentured Bonds shall be set forth in the Indenture which shall also embody the substance of all covenants, conditions and provisions set forth in the Loan Documents.

(d) The Borrower shall cooperate with the Authority and the Holder and shall execute such documents and instruments and take such actions as may reasonably necessary in connection with the execution and delivery of the Indenture, provided that (a) the terms of the Indenture shall not adversely affect the rights or expand the obligations of the Borrower under this Agreement and the other Loan Documents unless the Borrower shall have consented thereto in writing, and (b) the Borrower shall not be required to pay or incur any costs or expenses in connection with the execution and delivery of the Indenture.

(e) Prior to a proposed sale of 100% of the Bonds outstanding, provided no Event of Default has occurred and is continuing, the holder/seller shall provide the Borrower

with fifteen (15) days notice of the terms of the proposed sale and the opportunity to purchase or cause the purchase of the Bonds on the proposed sale date for the same terms. In the event the Borrower intends to purchase or cause the purchase of the Bonds, it shall provide notice to the holder/seller within such fifteen (15) day period and at least two (2) days prior to the proposed sale date.

Section 3.04. Replacement of Mutilated, Destroyed, Lost or Stolen Bonds. In case any Bond shall become mutilated or be destroyed, lost or stolen, the Authority shall cause to be executed a new Bond of like series, tenor and, upon the cancellation of the mutilated Bond or, in lieu of and in substitution for the Bond destroyed, lost or stolen, upon the Holder's paying the expenses and charges of the Authority in connection therewith and, in the case of a Bond being destroyed, lost or stolen, his filing with the Authority evidence satisfactory to it that the Bond was destroyed, lost or stolen, and of his ownership thereof, and his furnishing to the Authority indemnity satisfactory to it.

Section 3.05. Cancellation of Bonds and Return of Note Upon Payment in Full. Upon the Cancellation Date or payment in full of the principal of, premium, if any, and interest on the Bonds, the Holder shall surrender the Bonds to the Authority and upon payment in full of the principal of, premium, if any, and interest on the Bonds shall return the Note to the Borrower.

Section 3.06 Findings of Authority. The Authority is making the Loan to the Borrower under this Bond Agreement in order to promote the purposes and objectives of the Act. In the Resolution, the Authority has made certain findings and determinations with regard to the Project. The Authority has determined that the Project would: (i) tend to maintain or provide gainful employment opportunities within and for the people of the State; or (ii) aid, assist and encourage the economic development or redevelopment of any political subdivision of the State; or (iii) maintain or increase the tax base of the State or of any political subdivision of the State; or (iv) maintain or diversify and expand employment promoting enterprises within the State.

The Authority made the above findings and determinations based on the Application received by the Authority. The Borrower represented in the Application that the Charter School Project, together with Workforce A and Workforce B, will increase employment in the State by approximately 416 construction jobs.

## ARTICLE IV

### THE LOAN

Section 4.01. The Loan. The Authority agrees, upon the terms and subject to the conditions hereinafter set forth, to make the Loan to the Borrower for the purposes set forth in the recitals hereinabove. The Loan amount (\$22,748,000) shall initially be held in the Escrow Account. On the Release Date, the Bond proceeds shall be transferred to the Master Escrow Fund.

Section 4.02. The Debt Service Fund. There is hereby established a Debt Service Fund, into which the Agent shall, except as otherwise provided in this Agreement, deposit all funds received by the Agent from the Borrower, including payments made pursuant to this Agreement and the Note, and any other amounts required or permitted to be deposited therein pursuant to the provisions of this Agreement, the Cash Management Agreement and the Intercreditor Agreement. Such amounts shall be held in the applicable account in the Debt Service Fund pending payment to the Holder of the Bonds. The yield on the investment of funds in the Debt Service Fund shall not exceed 3.87% per annum. The Purchaser shall have a lien on the moneys in the Debt Service Fund pending the disbursement of such moneys. The following separate accounts shall be established, held and maintained in the Debt Service Fund by the Agent as follows:

(i) Sinking Fund Account: (A) The principal or sinking fund payments on the Note shall be deposited in the Sinking Fund Account within the Debt Service Fund and will be applied to the repayment of the principal of the Bonds and paid to the Holder upon the earlier to occur of (1) the Reset Date (as defined in the Bonds) if the Bonds will no longer be held by the Bank after such date, and 100% of the Bonds then outstanding are not remarketed to another Holder, (2) an Event of Default and acceleration of the Borrower's obligations under this Bond Agreement or (3) the Maturity Date (as defined in the Bonds); and

(B) The Borrower may request releases of the income earned on the Sinking Fund Account no more frequently than twice in any given period of twelve consecutive months. So long as (i) at the time of the request, no Event of Default has occurred and is continuing and (ii) after giving effect to such request, the amount on deposit in the Sinking Fund Account is not less than the aggregate principal amount required to be deposited as of such date as set forth in the Note, the Agent shall honor such request by disbursing the amount so requested to the Borrower in accordance with any payment instruction reasonably proposed by the Borrower; and

(ii) Interest Account: The interest payments on the Note, including the Subsidy Interest or Credits received into the Subsidy Receipt Account, shall be immediately deposited in the Interest Account within the Debt Service Fund and shall be paid to the Holder as required under the Bonds.

To evidence its obligation to repay the Loan, the Borrower shall execute the Note. The Loan and the Note shall be secured by the Collateral, subject only to the Permitted Encumbrances. The Loan shall be repaid as provided in the Note. Notwithstanding the right of the Borrower to receive Debt Service Subsidy Payments, the Borrower shall be obligated to make all payments of interest on the Note, including the Subsidy Interest to the extent the Subsidy Interest is not received directly by the Agent and deposited in the Subsidy Receipt Account. The Note shall be subject to mandatory tender as provided in the Note.

Section 4.03. Security. (a) The Obligations shall be secured by the Collateral, which will include without limitation (i) a first mortgage lien upon the Premises and all fixtures, equipment and the improvements of the Borrower in or upon the Premises; (ii) the Borrower's interest in all licenses, permits and approvals for the Premises, (iii) an assignment of the Ground Lease, and revenues, if any due to the Borrower or received by the Borrower from the use and occupancy of the Premises, and (iv) an assignment by the fee owner of all leases and rents and all construction documents received by it related to the construction of the improvements upon the Premises.

(b) (i) In addition, in order to further secure the Obligations, the Borrower hereby grants to the Authority and to the Purchaser a first priority security interest in, and hereby pledges to the Authority and to the Purchaser, all certificates and other instruments evidencing Investment Obligations and the investment proceeds thereof and all other sums or monies now or hereafter on deposit in the funds and accounts established under this Agreement, including without limitation the Escrow Account, the Debt Service Fund and the Subsidy Receipt Account, and as it relates to any of the foregoing, all roll-overs, renewals, continuations, extensions and modifications thereof, additions thereto, substitutions and replacements therefor, and increments thereto, whether of the original sum or sums or any lesser or greater sum, and all proceeds of any or all of the foregoing and all property which is within the definition of proceeds as it is defined in the Uniform Commercial Code.

(ii) The Borrower hereby authorizes the Escrow Agent to sign, endorse, execute, negotiate and deliver in the name of the Borrower any and all documents or instruments necessary to accomplish the aforesaid roll-overs, renewals, continuations, extensions, additions, substitutions, replacements, modifications, and increments. This is an agency coupled with an interest and any such signature, endorsement, execution, negotiation or delivery by the Escrow Agent shall have the same force, effect and validity as if done by the Borrower.

(iii) The Borrower shall have access to the funds in the Escrow Account only as permitted, and for the purposes allowed, by this Agreement. Until disbursed to the Borrower in accordance with this Agreement, the rights of the Borrower to the funds in the Project Fund shall at all times and in all respects be subject to the prior lien and pledge rights of the Authority and the Purchaser. In furtherance of the foregoing, the Escrow Agent hereby acknowledges that it is holding all the above-described property now or hereafter in the Escrow Account, the Debt Service Fund and the Subsidy Receipt Account in trust and for the benefit of the Authority and the Purchaser as security for the Obligations.

(iv) The Authority hereby acknowledges that by the Authority's Assignment,

the Authority has assigned to the Purchaser (subject to the Authority's Reserved Rights) all of the Authority's right, title and interest in and to all the above-described property now or hereafter in the Escrow Account, the Debt Service Fund and the Subsidy Receipt Account.

(c) It is the intention of the parties hereto that this Bond Agreement constitute a security agreement pursuant to the Uniform Commercial Code as enacted into law in the State for the purpose of creating the security interests granted herein.

(d) It is the intention of the parties hereto that this Bond Agreement shall also constitute and be considered a "control agreement" under applicable law.

Section 4.04. Incorporation of Terms. The other Loan Documents shall be made subject to all the terms and conditions contained in this Bond Agreement to the same extent and effect as if this Bond Agreement were fully set forth in and made a part of the other Loan Documents. This Bond Agreement is made subject to all the conditions, stipulations, agreements and covenants contained in the other Loan Documents to the same extent and effect as if the other Loan Documents were fully set forth herein and made a part hereof. Notwithstanding any of the foregoing, if any provisions in the other Loan Documents are inconsistent with this Bond Agreement, this Bond Agreement shall control.

Section 4.05. Payments. Payments to be made under this Bond Agreement or the Note which are stated to be due on a day which is not a Business Day shall be made on the next succeeding Business Day.

Section 4.06. Method of Payment. The Borrower shall tender payment to the Purchaser, and hereby agrees to permit the Agent to debit the Borrower Account and the Subsidy Receipt Account not later than the close of business on the day of any installment or other amount due pursuant to the terms of the Note in the amount so due. All payments of the Borrower on the Note shall be credited against corresponding payments due from the Authority on the Bonds.

Section 4.07. Prepayment. The Loan may be prepaid only as provided in the Note.

Section 4.08. Late Charge. A late charge may be assessed against the Borrower in accordance with the terms of the Note for any payment due under the Note which is not received within fifteen (15) days of its due date, which is equal to six (6%) percent of the amount remaining unpaid. Upon and during the continuance of an Event of Default, the Bonds and Note shall bear interest at the Default Rate, but not in excess of the maximum lawful rate of interest.

Section 4.09. No Abatement of Payments. If any of the Collateral shall be damaged or either partially or totally destroyed, or if title to, or the temporary use of the whole or any part of the Collateral shall be taken or condemned by a competent authority for any public use or purpose, there shall be no abatement or reduction in the amounts payable by the Borrower hereunder or under the Note, and the Borrower shall continue to be obligated to make such payments.

Section 4.10. Repair, Restoration and Relocation. In the event of any damage, destruction, taking or condemnation of any of the Collateral (each an “Event”), the Borrower shall cause the proceeds of any insurance or condemnation award to be applied in accordance with the Intercreditor Agreement to the reduction of the Loan or to repair, restore or relocate such Collateral; in the event the Borrower is permitted to repair or restore such Collateral, the Borrower shall cause the Project to be restored to a fair market value equal to not less than the fair market value immediately prior to such Event.

## ARTICLE V

### ESCROW ACCOUNTS, REBATE ACCOUNT AND ESCROW AGENT

Section 5.01. Creation of the Loan, Sale of the Bonds, Deposits in the Escrow Account. In order to create the Loan, the Authority, concurrently with the execution and delivery of this Bond Agreement, will sell, issue and deliver the Bonds to the Purchaser in consideration for which the Purchaser is hereby directed by the Authority to deposit the purchase price of the Bonds in the Escrow Account.

Section 5.02. Disbursement of Bond Proceeds. On the Release Date a portion of the Bond proceeds determined by the Borrower and approved by the Purchaser shall be deposited into the Initial Leverage Loan QSCB Account and a portion of the Bond proceeds determined by the Borrower and approved by the Purchaser shall be deposited into the Building 6.1 Escrow Account. Such funds shall then be further applied as set forth in the Master Escrow Deposit Agreement.

Notwithstanding the foregoing transfers, it shall be the obligation of the Borrower to cause the Bond Proceeds to be used solely for Proper Charges. To that end the Borrower shall cause the Bond Proceeds to be applied as set forth in the Tax Certificate and (i) shall cause the QALICB to not use or direct the use of the Bond Proceeds in any manner, or take or omit to take any other action, so as to cause the Bonds to fail to be qualified bonds for purposes of Sections 54(A), 54(F) and 6431 of the Code, (ii) not to use more than 2% of the proceeds of the Bonds for Issuance Costs, and (iii) to use 100% of Net Proceeds of the Bonds for the construction, rehabilitation or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with the proceeds of such issue or for the acquisition of equipment in the public school facility to be constructed.

Section 5.03. (Intentionally Omitted).

Section 5.04. No Liability of Authority, Purchaser or Agent. Nothing contained herein or in any documents and agreements contemplated hereby or in any other Loan Document shall impose upon the Purchaser, the Agent or the Authority any obligation to see to the proper application of the Bond Proceeds by the Borrower or any other recipient thereof, and, in making the initial lump sum disbursements/deposits into the Master Escrow Fund to facilitate the leverage loans, the Agent may rely on such documents, certificates and opinions delivered to it as of the Closing Date and on or about the Release Date by the Borrower and its counsel. The Purchaser, the Agent and the Authority shall be relieved of any liability with respect to making disbursements of the Bond Proceeds in accordance with the Master Escrow Deposit Agreement, the Building Loan Agreement and the Intercreditor Agreement.

Section 5.05. Furnishing Documents to the Authority. The Agent agrees that it shall hold all documents, affidavits, certificates and opinions delivered to the Agent pursuant to this Agreement for a period of at least two (2) years after the final disbursement of Bond Proceeds made by the Escrow Agent under the Intercreditor Agreement from the Escrow Disbursement Accounts. The Borrower hereby agrees to furnish or cause to be furnished to the Agent or

Authority such documents, affidavits, certificates, or opinions as may be requested in order to establish the use and investment of the Bond Proceeds for the Project. The Authority shall have the right to inspect such documents, affidavits, certificates and opinions at the corporate trust office designated by the Agent at reasonable times and upon reasonable notice. The Agent shall provide copies of such documents, affidavits, certificates and opinions to the Authority at its request.

Section 5.06. Establishment of Completion Date. Completion of the Project and payment of the costs related to the Loan shall be evidenced by delivery to the Authority and to the Purchaser of the Borrower's Completion Certificate signed by an Authorized Borrower Representative stating the date of completion of the Project and that, as of such date, except for amounts retained by the Agent at the Borrower's direction for any cost of the Project not then due and payable or, if due and payable not then paid: (i) the Project has been completed; (ii) the cost of all labor, services, materials and supplies used in the Project have been paid, or will be paid from amounts retained by the Agent at the Borrower's direction for any cost of the restoration of the Project not then due and payable or, if due and payable, not then paid; and (iii) the Project is being operated as an authorized "project" under the Act and substantially as proposed in the Application. Notwithstanding the foregoing, the Borrower's Completion Certificate may state that it is given without prejudice to any rights against third parties which exist at the date of the Borrower's Completion Certificate or which may subsequently come into being. Any amount remaining in the Escrow Accounts on the Completion Date (except for amounts therein sufficient to cover costs of the Project not then due and payable or not then paid) shall be used upon the written instructions of the Borrower by the Agent to make prepayments of principal only on the Note in accordance with its terms and following such date the Borrower shall not permit such funds to be invested at a yield materially higher than the yield on the Bonds. Notwithstanding the foregoing, on or prior to the third (3<sup>rd</sup>) anniversary of the Closing Date, the Borrower shall cause any Bond Proceeds remaining unexpended to be applied to redeem the Bonds.

Section 5.07. Borrower Required to Pay if Bond Proceeds Are Insufficient. In the event the moneys available for payment of the costs of constructing the Project are not sufficient to pay the costs of completing the Project, the Borrower agrees to complete the Project or cause the Project to be completed. The Authority, the Purchaser and the Agent make no warranty, either express or implied, that the Bond Proceeds will be sufficient to pay all of such costs. The Borrower agrees that if, after disbursement of all the Bond Proceeds, the Borrower shall pay any portion of the costs of the Project pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Authority, the Purchaser or the Agent.

Section 5.08. Escrow Account, Debt Service Fund and Escrow Accounts in Event of Default or Cancellation. If the Purchaser should, because of the occurrence of an Event of Default, declare the entire principal amount of the Note due and payable, then any Bond Proceeds remaining unexpended and any moneys in the Escrow Account or the Debt Service Fund, shall be paid over to the Purchaser to satisfy the amount of the Obligations due and payable and any other amounts due and payable pursuant to the Loan Documents.

Section 5.09. Establishment of Rebate Account. In addition to the Debt Service Fund established pursuant to Section 4.02 hereof and the Escrow Accounts set forth in Section 5.02 above, the following account shall be established.

(i) A special fund is hereby created and designated as the Rebate Account to be maintained with the Agent. The Borrower shall transfer or cause to be transferred by the Agent from the Rebate Account at such times and to such Person as required by Section 148 of the Code an amount equal to the Rebate Amount. Amounts in the Rebate Account shall be exempt from the lien of this Bond Agreement. To the extent such amounts on deposit in the Rebate Account are not sufficient to meet the Rebate Amount, the amount of the deficiency shall be immediately paid by the Borrower to the Agent for deposit in the Rebate Account. Notwithstanding anything contained in this Bond Agreement to the contrary, neither the Authority, the Purchaser nor the Agent shall be responsible or liable for any loss, liability, or expense incurred to the extent incurred as a result of the failure of the Borrower to fulfill its obligations with respect to the calculation and payment of the Rebate Amount. The Authority, the Purchaser and the Agent shall be entitled to rely conclusively upon the calculations provided by the Borrower.

(ii) The Agent, at the written direction of the Borrower given in accordance with this Bond Agreement, shall apply or cause to be applied the amounts in the Rebate Account at the times and in the amounts required by Section 148 of the Code solely for the purpose of paying the United States of America in accordance with Section 148 of the Code.

(iii) Notwithstanding the final payment of the Loan, moneys held in the Rebate Account shall be held by the Agent until the last Rebate Amount has been paid or until the Borrower has provided the Agent with a report of a Rebate Expert as required by Section 9.03 of this Bond Agreement showing that no Rebate Amount is owed.

(iv) Moneys held in the Rebate Account shall be invested and reinvested, upon the written direction of the Borrower, by the Agent in Investment Obligations that mature at such times specified in such written direction, which times shall be not later than such times as shall be necessary to provide moneys when needed for the payments to be made from such Rebate Account and in accordance with the provisions hereof. The interest earned on any moneys or investments in the Rebate Account shall be retained in such Account.

Section 5.10. Establishment of the Subsidy Receipt Account. In addition to the Debt Service Fund established pursuant to Section 4.02 hereof, the Escrow Accounts set forth in Section 5.02 above and the Rebate Account established pursuant to Section 5.09 hereof, the following account shall be established as a special account for the benefit of the Borrower, designated as the "Subsidy Receipt Account", in which the Agent shall deposit the Debt Service Subsidy Payments. On each Interest Payment Date the Agent shall transfer to the Debt Service Fund moneys sufficient to make the interest payment on the Bonds. The Purchaser shall have a lien upon all moneys in the Subsidy Receipt Account.

Section 5.11. Duties of the Agent with Respect to this Bond Agreement. The Agent agrees to act and do the following on behalf of the Authority:

(a) establish and maintain the Escrow Account, the Debt Service Fund, the Rebate Account and the Subsidy Receipt Account;

(b) upon receipt of notice by or actual knowledge of any officer of the Agent responsible for the administration of the Debt Service Fund, report to the Authority any breach of any covenant or any Event of Default by the Borrower under this Bond Agreement or any fact or circumstance which, except for any grace period permitted by this Bond Agreement, would result in any breach of a covenant or Event of Default by the Borrower hereunder. The Agent shall report such breach, Event of Default or information to the Authority promptly after the Agent becomes actually aware of such breach, Event of Default, fact or circumstance;

(c) furnish the Borrower and the Authority with a reminder notice of the Borrower's obligation to file its report with the Authority in accordance with Section 9.03 hereof and to file its rebate calculation and make its rebate payment, if any, to the Internal Revenue Service. Such reminder notice shall be furnished to the Borrower and the Authority at least 90 days prior to each fifth anniversary of the issuance of the Bonds as set forth in Section 9.03 hereof and within 30 days following the redemption or final payment of the Bonds, however, the failure of the Agent to provide said reminder notice shall not affect the Borrower's obligations pursuant to Section 9.03 of this Bond Agreement. The Agent shall have no further obligation for the computation of the Rebate Amount or the filing or payment thereof;;

(d) provide timely notice to the Authority that some or all of the Bonds have been redeemed or paid in full.

(e) act as calculation agent for the Bonds and in such capacity it shall:

(i) not less than 45 and not more than 90 days prior to each Subsidy Interest Payment Date, perform the calculations necessary to complete Form 8038-CP requesting payment of a credit ("Credit") equal to the Subsidy Interest Rate payable on the Bonds for the period ending on each such Subsidy Interest Payment Date;

(ii) secure the signature of an authorized officer of the Authority on such Form 8038-CP;

(iii) upon receipt of each Form 8038-CP duly executed by the Authority, file each such Form 8038-CP with the Department of the Treasury at the Internal Revenue Service Center, Ogden, Utah 84201-0020 (unless notified by the Authority or the Internal Revenue Service in writing of a change of address therefor) not less than 45 and not more than 90 days prior to each Subsidy Interest Payment Date for the Bonds; and

(iv) all Credits received by the Agent shall be transferred to the Subsidy Receipt Account.

(f) The Agent shall promptly provide the Authority with written notice of all communications it receives, as the Authority's representative (as such term is used in the Form 8038-CP), from the Internal Revenue Service or the United States Department of the Treasury including, but not limited to, any change in the filing requirements or procedures promulgated by the Internal Revenue Service or the United States Department of the Treasury of which the Agent has actual knowledge. In the event of any change in the filing requirements or procedures promulgated by the Internal Revenue Service or the United States Department of the Treasury, (i) the Authority and the Agent shall negotiate in good faith to amend this Agreement to conform to such change, and (ii) whether or not this Agreement is so amended, the Agent shall have the right to consult with a Bond Counsel with respect to such change. For purposes of this Section 5.11(f), the Agent shall not be required to undertake, or be deemed to have notice of, any such changes in the filing requirements or procedures promulgated by the Internal Revenue Service or the United States Department of the Treasury unless either (x) the Agent has actual knowledge thereof or (y) the Agent is advised thereof, in writing, by an authorized representative of the Authority or the Borrower or counsel to the Authority or counsel to the Borrower (including, but not limited to, Bond Counsel).

The Borrower hereby acknowledges that it is familiar with all of the duties of the Agent as set forth herein and agrees to be bound by the provisions hereof. The Borrower further agrees that the Agent, the Purchaser, the Authority and their respective employees shall not be liable for, and agrees to hold the Agent, the Purchaser, the Authority, their respective employees and the Agent's, the Purchaser's and the Authority's members, officers, directors, agents and attorneys harmless against, any loss or damage suffered by the Borrower as a result of the Agent's good faith performance hereunder except, in the case of the Agent or its employees, loss or damage suffered by the Borrower as a result of the gross negligence or willful misconduct of the Agent or its employees.

Section 5.12. Resignation of the Agent. The Agent or any successor thereto may at any time resign and be discharged of its duties and obligations created by this Bond Agreement by giving not less than sixty (60) days prior written notice to the Authority and the Borrower specifying the date when such resignation shall take effect. Such resignation shall take effect upon the day specified in such notice without the necessity of the appointment of a successor Agent, subject to reappointment in the event condemnation or insurance proceeds are received pursuant to Article IV hereof.

Section 5.13. Removal of the Agent. The Agent or any successor thereto may be removed at any time by the Holder by an instrument in writing signed and duly acknowledged by such Holder, a facsimile of which shall be filed with the Authority. Upon a sale of the entire principal outstanding amount of the Bond by the Purchaser, the Borrower shall have the right to remove the Agent by an instrument signed and duly acknowledged by the Borrower.

Section 5.14. Appointment of Successor Agent. In case at any time the Agent or any successor thereto shall resign, be removed, become incapable of acting, or be adjudicated a bankrupt or insolvent, or if a custodian, receiver, liquidator or conservator of the Agent or of its property shall be appointed, or if any public officer shall take charge or control of the Agent or of its property or affairs, a successor may be appointed by the Borrower by an instrument or

concurrent instruments in writing signed by the Authority and the Borrower and delivered to the successor Agent, notification thereto being given to the predecessor Agent, the Purchaser and the Borrower. A successor Agent appointed under the provisions of this Section shall be a bank, trust company or a national banking association, having capital and surplus aggregating at least ten million dollars (\$10,000,000), willing and able to accept the office on reasonable and customary terms, and authorized by law to perform all the duties imposed upon it by this Bond Agreement.

Section 5.15. Transfer of Rights and Property to Successor Agent. Any successor Agent appointed shall execute, acknowledge and deliver to its predecessor Agent, the Purchaser, the Borrower and the Authority an instrument accepting such appointment, and thereupon such successor Agent, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Agent, with like effect as if named herein as such Agent. Nevertheless, on the written request of the Authority or of the successor Agent, the predecessor Agent shall execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Agent all the right, title and interest of the predecessor Agent in and to any property held by it under the Loan Documents, and shall pay over, assign and deliver to the successor Agent any money or other property subject to the trust and conditions herein or set forth in the other Loan Documents. Should any deed, conveyance or instrument in writing from the Authority be required by such successor Agent for more fully and certainly vesting in and confirming to such successor Agent any such moneys, estates, properties, rights, powers and duties, then all such deeds, conveyances and instruments in writing shall be prepared by the successor Agent at the expense of the Borrower and shall be executed, acknowledged and delivered by the Authority, but only upon written request and so far as may be authorized by law.

Section 5.16. Merger or Consolidation. Any entity into which the Agent may be merged or converted, or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which it shall be a party, or any entity to which the Agent may sell or transfer all or substantially all of its business, shall be the successor to the Agent without the execution or filing of any paper or the performance of any further act except to notify the Authority, the Borrower and the Purchaser within thirty (30) days of such merger, conversion or consolidation, provided such entity shall be a bank, trust company or national banking association which is qualified to be a successor to the Agent under Section 5.15 and shall be authorized by law to perform all the duties imposed upon it by this Bond Agreement.

Section 5.17. Conflicts. In the event that the Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions with respect to any account maintained hereunder which, in its sole discretion, are in conflict either with other instructions received by it or with any provision of this Bond Agreement, the Agent shall have the absolute right to suspend all further performance under this Bond Agreement (except for the safekeeping of the Escrow Account) until the resolution of such uncertainty or conflicting instructions. In the event the Agent believes that there is a conflict that warrants the Agent's suspension of all further performance, the Agent shall immediately notify all of the parties in writing of that conflict, and further, shall convene a meeting of all interested parties within ten (10) days of the receipt of

such notice in which meeting the parties shall confer in good faith to try to resolve such conflicts. In the event the conflicts are not resolved as a result of that meeting, the parties agree that they will submit the matters in dispute to arbitration to be addressed on an expedited basis.

## ARTICLE VI

### REPRESENTATIONS AND COVENANTS OF THE AUTHORITY

Section 6.01. Authority Representations. The Authority represents to and agrees with the Purchaser and the Agent that as of date hereof and as of the Closing Date:

(a) The Authority is a public body corporate and politic, duly created and existing as a political subdivision of the State, with the power and authority set forth in the Act, including the power and authority to authorize the issuance of the Bonds under the Act.

(b) The Authority has the requisite authority to enter into this Bond Agreement. This Bond Agreement has been duly authorized, executed and delivered by the Authority and, assuming the due authorization, execution and delivery by the other parties hereto, will constitute a valid and binding obligation of the Authority, enforceable in accordance with its terms (subject to any applicable bankruptcy, insolvency, moratorium or other similar laws or equitable principles affecting creditors' rights or remedies generally.)

(c) The Authority has the requisite authority to execute the Bonds and when delivered to and paid for by the Purchaser on the Closing Date in accordance with the provisions of this Bond Agreement, and the Resolution, the Bonds will have been duly authorized, executed and issued and will constitute valid and binding limited obligations of the Authority enforceable in accordance with their respective terms and entitled to the benefits and security of this Bond Agreement (subject to any applicable bankruptcy, insolvency, moratorium or other similar laws or equitable principles affecting creditors' rights or remedies generally).

(d) The adoption of the Resolution and the execution of this Bond Agreement, and the Bonds and compliance by the Authority with the provisions thereof and hereof, under the circumstances contemplated thereby and hereby, to the knowledge of the Authority, do not and will not in any material respect conflict with or constitute on the part of the Authority a breach of or default under any indenture, deed of trust, mortgage, agreement, or other instrument to which the Authority is a party, or conflict with, violate, or result in a breach of any existing law, public administrative rule or regulation, judgment, court order or consent decree to which the Authority is subject.

(e) The Resolution and the forms of this Bond Agreement, and the Bonds were adopted or approved at a duly convened meeting of the Authority, with respect to which all legally required notices were duly given, and at which meeting a quorum was present and acting at the time of adoption thereof.

(f) The State is not obligated to pay, and neither the faith and credit nor taxing power of the State is pledged to the payment of, the principal or redemption price, if any, of or interest on the Bond. The Bond is a special, limited obligation of the Authority, payable solely out of the revenues or other receipts, funds or moneys of the Authority pledged under this Bond Agreement and from any amounts otherwise available under this Bond Agreement for the

payment of the Bond. The Bond does not now and shall never constitute a charge against the general credit of the Authority. The Authority has no taxing power.

(g) The Authority makes no representation as to (i) the financial position or business condition of the Borrower or (ii) the correctness, completeness or accuracy of any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made by the Borrower in connection with the sale or transfer of the Bonds, the execution and delivery of this Bond Agreement or the consummation of the transactions contemplated hereby.

Section 6.02. Designation of Bonds. The Authority hereby designates the Bonds as “Qualified School Construction Bonds” within the meaning of Section 54F of the Code.

Section 6.03. Authority Pledge. The Authority hereby pledges and assigns to the Borrower, and the Borrower hereby designates the Agent as its designee, the right to receive the Debt Service Subsidy Payments from the Bonds.

Pursuant to Section 9.03 hereof, the Borrower has covenanted to comply with the provisions of Sections 54A, 54F and 6341 of the Code. The Authority hereby covenants not to take or omit to take any action so as to cause Bonds to be ineligible for receipt of the Debt Service Subsidy Payments, and all applicable regulations promulgated with respect thereto, throughout the term of the Bonds. Pursuant to this Bond Agreement all investments of the Bond Proceeds will be at the direction of the Borrower.

## ARTICLE VII

### REPRESENTATIONS AND DUTIES OF THE PURCHASER

#### Section 7.01. Purchaser Representations.

(a) The Purchaser has made an independent investigation and evaluation of the financial position and business condition of the Borrower and the value of the Project, or has caused such investigation and evaluation of the Borrower and the Project to be made by Persons it deems competent to do so. The Purchaser has not relied on the Authority for any information regarding the Borrower or the Project and the Purchaser expressly relieves the Authority and its agents, representatives and attorneys of any liability for failure to provide such information or for any untrue fact or material omission in any information regarding the Borrower or the Project that may have been provided by the Borrower or the Authority, and their agents, representatives and attorneys.

(b) The Purchaser is purchasing the Bonds for its own account, with the purpose of investment and not with the intention of distribution or resale thereof, provided that the right is reserved by the Purchaser to dispose of all or any part of the Bonds in compliance with applicable federal and State securities laws and Section 3.02 and 3.03 of this Bond Agreement if, in the future, the Purchaser, in its sole discretion, deems it desirable to do so. The Bonds will not be sold unless registered in accordance with the rules and regulations of the Securities and Exchange Commission or the Authority and the Borrower are furnished with an opinion of counsel or a "No Action" letter from the Securities and Exchange Commission that such registration is not required.

#### Section 7.02. Tax Consequences. The Purchaser hereby acknowledges the following arising under the Code:

(a) On each Interest Payment Date the Authority shall be entitled to receive refundable tax credits in the form of cash subsidy payments from the United States Treasury equal to 100% of the interest payable on the Bonds on each Interest Payment Date for the Bonds pursuant to Section 54F of the Code and Section 6431 of the Code up to the applicable tax credit rate (as such term is defined in the Code). However, various events can occur that may delay, impede or negate the receipt of such subsidy or reduce the amount of such subsidy.

(b) The Purchaser understands that interest on the Bonds will be taxable as ordinary income for federal income tax purposes and that neither the Authority nor Bond Counsel expresses an opinion regarding other tax consequences related to the ownership or disposition of, or the receipt of federal tax credits or the accrual or receipt of interest (or deemed interest) with respect to, the Bonds.

Section 7.03. Filing of Other Documents. The parties hereto shall execute, at the request of the Purchaser or the Agent, and the Borrower shall file, and hereby authorizes the Purchaser or Agent to file (on the Borrower's behalf or otherwise) such Financing Statements,

continuation statements, notices and such other documents necessary to perfect all security interests created pursuant to the terms of this Bond Agreement, the other Loan Documents and to preserve and protect the rights of the Purchaser in the Collateral, under this Bond Agreement and the Note and the granting by the Authority of certain rights of the Authority pursuant to this Bond Agreement and the Authority's Assignment, and the Authority shall have no responsibilities for such filings whatsoever, other than executing the documents requested by the Borrower or the Agent.

Section 7.04. Notice of Events of Default. The Purchaser, the Agent and the Authority shall each notify the other parties promptly in writing of any event of which it has actual notice which constitutes an Event of Default or which, with the passage of time, will become an Event of Default.

## ARTICLE VIII

### REPRESENTATIONS AND WARRANTIES

The Borrower hereby represents and warrants to the Authority, to the Purchaser and the Agent that:

Section 8.01. Organization, Powers, etc. The Borrower is an urban renewal limited liability company duly organized, validly existing and in good standing under the laws of the State. The Borrower has the power and authority to own its properties and assets and to carry on its business as now being conducted (and as now contemplated by the Borrower) and has the power to perform all the undertakings of the Loan Documents, to borrow hereunder and to execute and deliver the Loan Documents.

Section 8.02. Execution of Loan Documents. The execution, delivery and performance of the Loan Documents and other instruments required by this Bond Agreement:

- (a) have been duly authorized by all requisite corporate action;
- (b) do not and will not contravene any provision of law, governmental rule, regulation or order of any court or other agency of government applicable thereto;
- (c) do not and will not conflict with or violate any provision of any charter document, operating agreement, by-law or governing document of the Borrower;
- (d) do not and will not violate or result in a default under any provision of any indenture, mortgage, contract or other instrument to which it is a party or any order, writ, injunction or decree to which it is a party or by which it or its properties or assets are bound;
- (e) do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents and the Permitted Encumbrances.

Section 8.03. Title to Collateral. The Borrower has or will have good and marketable title to the Collateral and other assets (if any) free and clear of any lien or encumbrance, except for the Permitted Encumbrances. Upon filing the Mortgage the Authority will have a first lien upon the Borrower's interest in the Premises and a valid and perfected first lien security interest in the improvements upon the Premises, each subject to a Subordination and Non Disturbance Agreement. Upon the filing of the Financing Statements, the Authority and/or the Purchaser has or will have a perfected first lien security interest in the Collateral. The Borrower has all of the trademarks and licenses necessary for the conduct of its businesses.

Section 8.04. Litigation. To its knowledge, after due inquiry, there is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or to the best of its knowledge, threatened against or affecting it or any of its

properties or rights which, if adversely determined, would (i) materially adversely affect the transactions contemplated hereby, (ii) affect the validity or enforceability of the Loan Documents, (iii) affect its ability to perform its obligations under the Loan Documents, (iv) materially impair its right to carry on its business substantially as now conducted (and as now contemplated by it) or (v) have a material adverse effect on its financial condition or the value of the Collateral.

Section 8.05. Payment of Taxes. It has filed or caused to be filed all Federal, State and local tax returns which are required to be filed, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

Section 8.06. No Defaults. It is not in default in the performance, observance or fulfillment of any order, arbitrator or governmental or non-governmental body; and is not subject to or a party to any order of any court or governmental or non-governmental body arising out of any action, suit, or proceeding under any statute or other law respecting antitrust, monopoly, restraint of trade, unfair competition or similar matters.

Section 8.07. No Material Adverse Change; Financial Statements; and Solvency.

(i) There has been no material adverse change in its financial condition since the date of the financial statements submitted to the Purchaser in connection with the making of the Loan.

(ii) The financial statements that have been heretofore delivered to the Purchaser are true, correct and current in all respects and fairly present the respective financial conditions of the subjects thereof as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof and no borrowings (other than the Loan), which might give rise to a lien or claim against the Premises (other than such liens as are required to be released as of the Release Date) or proceeds of the Loan have been made by Borrower or others since the dates thereof.

(iii) The Borrower is, and upon consummation of the transactions contemplated by this Bond Agreement, the other Loan Documents and any other related documents, will be, solvent.

Section 8.08. Obligations of the Borrower. The Loan Documents have been duly executed and delivered and are legal, valid and binding obligations of the Borrower and are enforceable against the Borrower in accordance with their respective terms (subject to any applicable bankruptcy, insolvency, moratorium or other similar laws or equitable principles affecting creditors' rights or remedies generally.)

Section 8.09. Reserved.

Section 8.10. Design of the Project. Except as set forth in Schedule A hereto, to its knowledge after due inquiry, the present operation of the Project and the operation as presently

contemplated and as described in the Application does not and will not conflict with any current building, zoning, health, safety, water, air pollution or other ordinances, orders, laws or regulations applicable thereto.

Section 8.11. Commencement of Project; Proper Charges. No cost of the Project for which the Borrower intends to seek reimbursement was incurred prior to the sixtieth day prior to March 8, 2011. The Bond Proceeds will only to be used to pay Proper Charges.

Section 8.12. Placement in Service. The improvements to facilities financed with the proceeds of the Bonds were not placed in service or acquired by the Borrower (determined in accordance with the provisions of the Code) more than one year prior to the date of the debt being financed with the proceeds of the Bonds.

Section 8.13. Financial Conflicts of Interest. The Borrower certifies that all applicable State and local law requirements governing conflicts of interest are satisfied with respect to the Qualified School Construction Bonds.

Section 8.14. No Federal Guaranty. The Bonds will not be federally guaranteed within the meaning of Section 149(b) of the Code.

Section 8.15. Issuance Costs. No more than 2% of the proceeds of the Bonds will be used to pay the issuance costs of the Bonds.

Section 8.16. Arbitrage. The Borrower shall comply with the requirements of Section 148 of the Code with respect to the proceeds of the Bonds as provided in the Tax Certificate.

Section 8.17. Important Inducement. The availability of the financial assistance by the Authority as provided herein has been an important inducement to the Borrower to engage in the Project and to locate the Project in the State.

Section 8.18. No Action. The Borrower has not taken and will not take any action and knows of no action that any other Person has taken or intends to take, which would prohibit the Bonds from being Qualified School Construction Bonds under the Code.

Section 8.19. Maturity Limitation. No maturity of any Bond exceeds the maximum term determined by United States Treasury Department under Section 54A(d)(5)(B) to be 19 years.

Section 8.20. Expenditure Representation. The Borrower reasonably expects (i) 100 % or more of Net Proceeds of the Bonds to be spent for the purpose of construction, rehabilitation or repair of a public school facility or for the acquisition of land on which such a facility is to be constructed with the proceeds of such issue within the three year prior beginning on the date of issuance of the Bonds and (ii) to incur a binding commitment to spend at least 10% of Net Proceeds of the Bonds within the six-month period beginning on the date of issuance of the Bonds.

Section 8.21. Unexpended Bond Proceeds. Should there remain any unspent Bond proceeds at the end of the 3 years from the Issue Date, the Borrower shall cause such unexpended funds to be applied to redeem the Bonds.

## ARTICLE IX

### COVENANTS OF THE BORROWER

The Borrower covenants and agrees, so long as this Bond Agreement shall remain in effect or the Note shall be outstanding, as follows:

Section 9.01. Insurance Required.

(A) the Borrower shall keep the Premises and machinery, furniture, fixtures and equipment continuously insured, to the extent of their full insurable replacement value and in such amounts in order to prevent the application of co-insurance and, in no event, less than the amount of the Note and other Obligations outstanding, against loss or damage by fire, with extended coverage, and coverage against loss or damage by vandalism, malicious mischief and, if available and required against flood and against other hazards as the Purchaser or the Authority may require, from time to time. The Borrower shall also maintain or cause to be maintained commercial general liability insurance and workers compensation insurance, in such total amounts as the Purchaser or the Authority may require, from time to time naming both the Authority, the Purchaser and the Escrow Agent as an additional insured (except for workers compensation insurance). All property insurance shall name the Purchaser as the mortgagee and lender loss payee. At all times during the term of this Agreement, such coverage as noted herein shall include the insurance provisions contained in the Mortgage.

Section 9.02. Payment of Taxes, etc. The Borrower shall promptly pay and discharge or cause to be promptly paid and discharged all payments in lieu of taxes, assessments and governmental charges or levies imposed upon it or in respect of any of its property and assets before the same shall become in default, as well as all lawful claims which, if unpaid, might become a lien or charge upon such property and assets or any part thereof, except such that are contested in good faith in an appropriate forum and for which it has set aside adequate reserves. The Borrower shall also take such actions as may be necessary to obtain and preserve the Debt Service Subsidy Payments.

Section 9.03. Compliance with Code and Arbitrage Regulations. (a) (i) The Borrower hereby covenants that it will not take or cause the QALICB to take any action, or fail to take any action, if any such action or failure to take action would cause the Bonds to fail to be a "qualified bond" for purposes of Section 6431 of the Code, or otherwise make the Authority ineligible to receive Debt Service Subsidy Payments or that would cause the Bonds to be an "arbitrage bond" within the meaning of Section 148(a) of the Code. The Borrower further covenants to comply and cause the QALICB to comply with the requirements of Section 54(A) and 54 (F) of the Code and with the rebate requirements (including the prohibited payment provisions) contained in Section 148(f) of the Code and any regulations promulgated thereunder, to the extent applicable.

(ii) Reserved.

(iii) The Borrower shall direct the Agent to make investments of amounts in the Escrow Account and the Debt Service Fund only at market prices within the

meaning of Treasury Regulations Section 1.148-1. In addition, any and all actions to be undertaken by the Borrower or by any other Person as to which the Authority or the Agent must, pursuant to the terms hereof, consent or approve in advance, shall be deemed to be the actions of the Borrower or such other Person (and not the actions of the Authority or the Agent).

(b) The Borrower shall not permit at any time or times any of the Gross Proceeds from the sale of the Bonds or other of its funds to be used, directly or indirectly, to acquire any Investment Property (within the meaning of Section 148(b)(2) of the Code) the acquisition of which would cause the Bonds to be “arbitrage bonds” for the purposes of Section 148 of the Code. The Borrower shall utilize and shall cause the QALICB to utilize the Bond Proceeds from the sale of the Bonds so as to satisfy the reasonable expectations of the Borrower set forth in the Tax Certificate of the Borrower furnished to Bond Counsel and the Authority.

(c) The Borrower shall cause the QALICB use the Net Proceeds of the Bonds to acquire, construct and equip the Project in the manner and as specifically set forth in the Tax Certificate furnished to Bond Counsel and the Authority. The Borrower shall not expend or allow the QALICB to expend the Bond Proceeds on assets other than those listed in the Tax Certificate without the express written consent of Bond Counsel.

(d) Unless 100% of the proceeds of the Bonds are expended on the Project within the 3-year period beginning on the Issue Date, the Borrower will retain (i) Bond Counsel, (ii) any nationally recognized firm of certified public accountants, (iii) any reputable firm which offers to the tax-exempt/tax-credit bond industry rebate calculation services and holds itself out as having expertise in that area, or (iv) a Person or firm approved by Bond Counsel, in order to calculate the amount of rebate, if any, due to the United States pursuant to Section 148(f) of the Code, as set forth in paragraph (f) below (the “Rebate Expert”), on or no later than 30 days before the Initial Rebate Computation Date (as defined below) and on each rebate Computation Date thereafter, (A) to compute the Rebate Amount with respect to the Bonds for the period ending on such rebate Computation Date, (B) to deliver an opinion to the Authority and Agent concerning its conclusions with respect to the amount (if any) of such Rebate Amount together with a written report providing a summary of the calculations relating thereto and (C) to deliver an opinion to the Authority and Agent that all of the Gross Proceeds of the Bonds (within the meaning of Section 148(f) of the Code), other than Gross Proceeds of the Bonds on deposit in a Bona Fide Debt Service Fund, have been expended on or prior to the initial rebate Computation Date. The Computation Date shall include (i) the final maturity of the Bonds, (ii) if the Bonds are redeemed prior to maturity, the date on which the Bonds are redeemed, (iii) the first day of the fifth anniversary of the date of issuance of the Bonds (the “Initial Rebate Computation Date”) and each fifth anniversary thereafter, and (iv) any other date that may be required by the Code.

(f) The Borrower shall direct the Agent in writing to rebate the Rebate Amount to the United States on behalf of the Authority. The Rebate Amount as of any Computation Date is the excess of the Future Value of all receipts on Nonpurpose Investments (“Nonpurpose Receipts”) over the Future Value of all payments on Nonpurpose Investments (“Nonpurpose Payments”). To the extent amounts received from Nonpurpose Investments are reinvested, these amounts may be netted against each other and not taken into account in the

computation of the Rebate Amount. Nonpurpose Receipts and Nonpurpose Payments shall be determined as described below.

- (1) Nonpurpose Payments. Nonpurpose Payments include actual payments (amounts of Gross Proceeds actually or constructively paid to acquire a Nonpurpose Investment including Qualified Administrative Costs); “allocation” payments (for a Nonpurpose Investment that is allocated to the Bonds after already having been acquired by the Borrower (e.g., sinking fund proceeds), an amount equal to the Value of the Investment on the allocation date); Computation Date payments (for a Nonpurpose Investment allocated to the Bonds at the end of the preceding Computation Period, the Value of the Investment at the beginning of the Computation Period); Yield Reduction Payments, if any; and the Computation Date credit equal to \$1,000.
- (2) Nonpurpose Receipts. Nonpurpose Receipts include actual receipts (amounts actually or constructively received with respect to a Nonpurpose Investment, such as earnings and return of principal, reduced by Qualified Administrative Costs); “deallocation” receipts (for a Nonpurpose Investment that ceases to be allocated to the Bonds or subject to rebate, the Value of the Investment on the “deallocation” date); Computation Date receipts (the Value of any Nonpurpose Investment held at the end of any Computation Period); and rebate receipts (any recovery of an overpayment of rebate).

Investments of amounts held in a Bona Fide Debt Service Fund for the Bonds will be excepted from the rebate requirement but only if the gross earnings on such fund for such Bond Year do not exceed \$100,000.

(g) For each investment of Gross Proceeds in a Non-Purpose Investment, the Borrower shall direct the Agent to record, without limitation, the following information: purchase date, purchase price, face amount, stated interest rate, any accrued interest due on its purchase date, disposition date, disposition price and any accrued interest due on the disposition date. The Yield to maturity for an investment presently means that discount rate, based on a compounding frequency the same as the Bonds (or such other compounding permitted by the Code), which when used to determine the present worth, on the purchase date of such investment or the date on which the investment becomes a Non-Purpose Investment, whichever is later, of all payments of principal and interest on such investment gives an amount equal to the fair market value of such investment including accrued interest due on such date.

(h) On each Computation Date, if such Rebate Amount payable exceeds the amount then on deposit in the Rebate Account, the Borrower shall within ten (10) days of the receipt of the report furnished by the Rebate Expert pursuant to paragraph (e) of this Section, pay to the Agent, the amount necessary to make up such deficiency and direct the Agent to pay the

same to the United States within sixty (60) days of the Computation Date. The Borrower shall, in a timely fashion, give all written notices and directions to the Agent as are called for hereunder for the payment of the Rebate Amount. Any sums remaining in the Rebate Account following such payments shall be returned to the Borrower. When due, the Authority shall have the right, but shall not be required, to make such payment to the Agent on behalf of the Borrower. Any amount advanced by the Authority pursuant to this paragraph (h) shall be added to the moneys owing by the Borrower under this Loan Agreement and shall be payable on demand with interest at the rate of twelve percent (12%) per annum.

(i) The rebate shall be paid in installments which shall be made at least once every fifth Bond Year. The first such installment shall be due to the United States on behalf of the Authority not later than sixty (60) days after the end of the fifth (5th) Rebate Year and shall be in an amount which ensures that the Rebate Amount due under the Code with respect to the Bonds is paid. Each subsequent payment shall be made not later than five (5) years after the date the preceding payment was due. Within sixty (60) days after the retirement of the Bonds at final maturity or upon earlier redemption, the Borrower shall direct the Agent to pay to the United States on behalf of the Authority the aggregate Rebate Amount due under the Code with respect to the Bonds not theretofore paid.

(j) Each payment of the Rebate Amount to be paid to the United States shall be filed with the Internal Revenue Service Center, Ogden, Utah 84201, or such other address that may be specified by the Internal Revenue Service. Each payment shall be accompanied by Form 8038-T (or such other form required by the Internal Revenue Service) and a statement identifying the Authority, the date of the issue, the CUSIP number for the Bond with the longest maturity and a copy of the applicable Form 8038 TC.

(k) The Borrower acknowledges that the Authority shall have the right at any time and in the sole and absolute discretion of the Authority to obtain from the Borrower and the Agent the information necessary to determine the Rebate Amount required to be paid to the United States pursuant to Section 148(f) of the Code. Additionally, the Authority may, with reasonable cause, (i) review or cause to be reviewed any determination of the amount to be paid to the United States made by or on behalf of the Borrower and (ii) make or retain a Rebate Expert to make the determination of the amount to be paid to the United States. The Borrower hereby agrees to be bound by any such review or determination, absent manifest error, to pay the costs of such review, including without limitation the reasonable fees and expenses of counsel or a Rebate Expert retained by the Authority, and to pay to the Agent any additional amounts for deposit in the Rebate Account required as the result of any such review or determination.

(l) Except as may be permitted pursuant to Section 148(c) of the Code (relating to certain temporary periods for investment), at no time during the term of the Bonds shall the amount invested by the Borrower in Non-Purpose Investments with a Yield higher than the Yield on the Bonds exceed 10% of the then outstanding principal amount of the Bonds. The aggregate amount invested in Non-Purpose Investments shall be promptly and appropriately reduced as the outstanding principal of the Bonds is reduced.

(m) Notwithstanding any provision of this Section to the contrary, the Borrower shall be liable, and shall indemnify and hold the Authority and the Agent harmless against any liability, for payments due to the United States pursuant to Section 148(f) of the Code. Further, the Borrower specifically agrees that neither the Authority nor the Agent shall be held liable, or in any way responsible, and the Borrower shall indemnify and hold harmless the Agent and the Authority against any liability, for any mistake or error in the filing of the payment or the determination of the Rebate Amount due to the United States or for any consequences resulting from any such mistake or error. The provisions of this paragraph shall survive termination of this Agreement. In the event of a conflict between the provisions of this Agreement and the Code, the provisions of the Code shall control.

(n) The Authority, the Agent and the Borrower acknowledge that the provisions of this Section 9.03 are intended to comply with Section 148(f) of the Code and the regulations promulgated thereunder and if as a result of a change in such Section of the Code or the promulgated regulations thereunder or in the interpretation thereof, a change in this Section 9.03 shall be permitted or necessary to assure continued compliance with Section 148(f) of the Code and the promulgated regulations thereunder, then with written notice to the Agent, the Authority and the Borrower shall be empowered to amend this Section 9.03 and the Authority may require, by written notice to the Borrower and the Agent, the Borrower to amend this Section 9.03 to the extent necessary or desirable to assure compliance with the provisions of Section 148 of the Code and the regulations promulgated thereunder; provided that either the Authority or the Agent shall require, prior to any such amendment becoming effective, at the sole cost and expense of the Borrower, an opinion of Bond Counsel satisfactory to the Authority to the effect that either (i) such amendment is required to maintain the Bonds' eligibility for Debt Service Subsidy Payments or (ii) such amendment shall not adversely affect the Bonds' eligibility for Debt Service Subsidy Payments.

(o) (i) The obligation to pay any Rebate Amount with respect to the Bonds shall be treated as satisfied if the proceeds of the Bonds are expended within the three years following the Issue Date. The Available Project Proceeds qualify for an initial three (3) year (or five (5) year) temporary period.

(p) The Borrower shall give immediate telephonic notice, promptly confirmed in writing, to the Authority and the Escrow Agent of any Determination of Ineligibility whether the Borrower is on Notice of such Determination of Ineligibility by its own filing of any statement, tax schedule, return or document with the Internal Revenue Service which discloses that a Determination of Ineligibility shall have occurred, by its receipt of any oral or written advice from the Internal Revenue Service that a Determination of Ineligibility shall have occurred, or otherwise.

Section 9.04. Compliance with Applicable Laws. The Borrower agrees to comply, and cause the QALICB to comply in all material respects with all applicable Federal, State, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter pertaining to the operation, conduct and maintenance of the Project and its existence and business including, without limitation, all Federal, State and local laws relating to ERISA benefit plans, environmental, safety, or health matters, and hazardous or liquid waste or

chemicals or other liquids (including use, sale, transport and disposal thereof).

Section 9.05. Environmental Covenant. The Borrower shall not permit or cause to be permitted any action to occur which would be in direct violation of any and all applicable Federal, State, county and municipal laws, ordinances, rules and regulations now in force or hereinafter enacted, including the regulations of the Authority and the regulations of the State Department of Environmental Protection or the United States Environmental Protection Agency.

The Borrower shall give immediate written notice to the Authority and the Purchaser of any notices of investigation or any similar communication from the State Department of Environmental Protection or other governmental authorities regarding potential violations of I.S.R.A. and/or the Spill Compensation and Control Act.

Within five (5) Business Days of receipt, the Borrower shall give the Authority and the Purchaser notice or copies (if written) of all claims, complaints, orders, citations or notices, whether formal or informal, written or oral, from any governmental body or private Person or entity, relating to air emissions, water discharge, noise emission, solid or liquid waste disposal, hazardous waste or materials, or any other environmental, health or safety matter, if alleged to be a violation of applicable law. Such notices shall include, among other information, the name of the party who filed the claim, the potential amount of the claim, and the nature of the claim.

The Borrower shall maintain, or cause to be maintained, in effect the Environmental Insurance Policy for the term of the Loan.

Section 9.06. Financial Statements. (a) The Borrower shall furnish the Purchaser and the Authority (upon the request of the Authority), with audited financial statements dated as of the end of the calendar year, including a balance sheet and income statement within one hundred twenty (120) days after the end of each fiscal year of the Borrower during the term of the Loan and any other financial statements as may be reasonably requested by the Purchaser. All such statements will be reviewed by an independent certified public accountant acceptable to the Purchaser and prepared in accordance with Generally Accepted Accounting Principles applicable to limited liability companies, consistently applied. All such statements shall be certified to the Purchaser.

(b) The Guarantor shall furnish the Purchaser and the Authority (upon the request of the Authority), with audited financial statements dated as of the end of the calendar year, including a balance sheet and income statement, detailed information on all real estate holdings within one hundred twenty (120) days after the end of each fiscal year of the Guarantor during the term of the Loan and any other financial statements as may be reasonably requested by the Purchaser. All such statements will be reviewed by an independent certified public accountant acceptable to the Purchaser and prepared in accordance with Generally Accepted Accounting Principles applicable to limited liability companies, consistently applied. All such statements shall be certified to the Purchaser.

(b) The Borrower and the Guarantor shall each furnish the Purchaser (and to the Authority upon the Authority's request) with their Federal income tax returns and state income

tax returns prepared by a certified public accountant firm, satisfactory to the Purchaser, which are required to be submitted within forty-five (45) days of filing.

At the time of the delivery of the annual financial statements provided for herein, the Borrower shall furnish a certificate of its chief financial officer to the Purchaser stating that it is in compliance with all financial and other covenants under the Loan Documents and that it has no knowledge that an Event of Default, or an event of which, with notice or lapse of time, or both, would constitute an Event of Default, has occurred and is continuing, or if such an Event of Default has occurred, a statement as to the nature thereof and the action which the Borrower and the Guarantor propose to take with respect thereto.

Section 9.07. Mergers, etc. The Borrower will not permit a change in control of the Borrower, nor merge into or consolidate with or into, or sell, assign, lease (other than to the Proposed Tenants) or as otherwise provided in the Loan Documents or otherwise dispose of (whether in one transaction or in a series of transactions) any of its assets (whether now owned or hereafter acquired) to any Person without the prior express written consent of the Authority and the Purchaser and, if applicable, without complying with Section 10.04.

Without limiting the effect of the first paragraph of this Section 9.07, if at any time during the period the Bonds are outstanding, the Borrower proposes (i) to merge or consolidate with any Person owning or occupying facilities located wholly or partly within the Project Municipality, or (ii) to gain control of any such Person, or (iii) to acquire a greater than 50% ownership interest of any such Person (whether by ownership of stock or otherwise), or (iv) to assume or guarantee liabilities incurred in connection with any facility located wholly or partly within the Project Municipality owned or occupied by any such Person, or (v) to enter into any exchange of property for stock or stock for property pursuant to a plan of reorganization with any such Person, the Borrower shall, prior to the taking of any of the foregoing proposed actions, deliver to the Authority and the Purchaser an opinion of nationally recognized Bond Counsel to the effect that the proposed action will not violate the provisions of this Section or of Section 9.11 hereof nor in any way cause a Determination of Ineligibility.

Section 9.08. Assignment of Bond Agreement. The Borrower may not assign or transfer the whole or any part of this Bond Agreement without the prior express written consent of the Authority and the Purchaser. Any assignment of this Bond Agreement by the Borrower without the prior express written consent of the Authority and the Purchaser shall be void.

Section 9.09. Indemnification. (a) The Borrower agrees to and does hereby indemnify and hold harmless the Authority, Agent and Purchaser, any person who "controls" the Authority, Agent and Purchaser (within the meaning of Section 15 of the Securities Act of 1933, as amended), and any member, officer, director, official, agent, employee, and attorney of the Authority, Agent, Purchaser or the State (collectively called the "Indemnified Parties") against any and all losses, claims, damages or liabilities (including all costs, expenses and reasonable counsel fees incurred in investigating or defending such claim) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected with (a) the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing or sale of the Project or any part thereof

including the payment of rebate to the federal government; or (b) any untrue statement of a material fact contained in information provided by the Borrower with respect to the transactions contemplated hereby; (c) any omission of a material fact necessary to be stated therein in order to make such statement not misleading or incomplete; or (d) the acceptance or administration by the Authority, the Agent or the Purchaser of their respective duties under this Bond Agreement. In case any action shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect to which indemnity may be sought against the Borrower, such Indemnified Party shall promptly notify the Borrower, in writing, and except where the Borrower is the claimant the Borrower shall assume the defense thereof, including the employment of counsel satisfactory to the Indemnified Party, the payment of all costs and expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ separate counsel at the Borrower's expense in any such action and to participate in the defense thereof if, in the opinion of the Indemnified Party, a conflict of interest could arise out of the representation of the parties by the same counsel. The Borrower shall not be liable for any settlement of any such action effected without Borrower's consent, but if settled with the consent of the Borrower, or if there is a final judgment for the claimant on any such action, the Borrower agrees to indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment. Notwithstanding anything in this Bond Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the Borrower's liability, the provisions of this Section 9.09 shall control the Borrower's obligations and shall survive repayment of the Bonds.

(b) The Borrower agrees to and does hereby indemnify and hold harmless the Indemnified Parties against any and all losses, claims, damages or liabilities (including all costs, expenses, and reasonable counsel fees incurred in investigating or defending such claims) suffered by any of the Indemnified Parties and caused by, relating to, arising out of, resulting from, or in any way connected to an examination, investigation or audit of the Bonds by the Internal Revenue Service ("IRS"). In the event of such examination, investigation or audit, the Indemnified Parties shall have the right to employ counsel at the Borrower's expense. In such event, the Borrower shall assume the primary role in responding to and negotiating with the IRS, but shall inform the Indemnified Parties of the status of the investigation. In the event Borrower fails to respond adequately and promptly to the IRS, the Authority shall have the right to assume the primary role in responding to and negotiating with the IRS and shall have the right to enter into a closing agreement, for which Borrower shall be liable, copies of which shall be provided to the Purchaser.

(c) The Borrower further agrees to indemnify, protect, defend and hold harmless the Indemnified Parties against any and all losses, claims, damages, liabilities or expenses whatsoever, including reasonable counsel fees, caused by, or which arise out of or relate to, any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement, of a material fact contained or incorporated in any material supplied by the Borrower in connection with the placement of the Bonds, if applicable (the "Disclosure Materials"), or which arise out of or relate to, any omission or alleged omission from such Disclosure Materials of any material fact required to be stated therein or necessary in order to make the statements contained therein, in light of the circumstances under which they were

made, not misleading This indemnity agreement is in addition to any other liability which the Borrower may otherwise have.

(d) Notwithstanding anything in this Bond Agreement to the contrary which may limit recourse to the Borrower or may otherwise purport to limit the Borrower's liability, the provisions of this Section 9.09 shall control the Borrower's obligations and shall survive repayment of the Bond.

Section 9.10. Additional Debt; Secondary Financing. Except for Permitted Indebtedness, the Borrower shall not invest, guaranty or borrow through any additional bond or loan or other credit facilities, without the written approval of the Purchaser. Except for Permitted Encumbrances, there shall be no secondary financing encumbering the Project, the Premises or the Collateral nor shall there be any encumbrances or security interests conveyed in, nor hypothecation or pledge of, any of the Borrower's assets. Notwithstanding any other provisions of this Agreement or the other Loan Documents, the Borrower shall have the right at any time and from time to time to incur Permitted Indebtedness, including Permitted Indebtedness outstanding on the Closing Date and the Release Date.

Section 9.11. Brokerage Fee. The Authority, the Agent and the Purchaser shall not be liable to the Borrower for any brokerage fee, finders fee, or loan servicing fee and the Borrower shall hold the Authority, the Agent and the Purchaser harmless from any such fees or claims.

Section 9.12. Additional Covenants Concerning the Collateral. The Borrower further covenants and agrees or agrees to cause the QALICB to (a) retain possession of the Project, the Collateral or any interest therein during the existence of this Bond Agreement and not to sell, exchange, assign, loan, deliver, lease (other than to the Proposed Tenants or as otherwise provided in the Loan Documents), mortgage or otherwise dispose of same without the prior express written consent of the Authority and Purchaser, except (i) for Permitted Encumbrances, (ii) as expressly permitted below, or (iii) to the extent reasonably necessary for the operation of the Borrower's business in the ordinary course and consistent with past practices with respect to the sale or disposal of obsolete equipment, machinery or furniture provided that (x) with respect to tangible Collateral, such tangible Collateral is replaced with items of equal or greater utility and value (which shall then be included as Collateral) and (y) doing so shall not cause or result or reasonably be expected to cause or result in any failure or inability of the Borrower to comply or continue to comply with provisions of Section 9.16 hereof; (b) to keep the Collateral located at the location to be set forth in the Mortgage, and not to remove same from said location (except as permitted below) without the prior express written consent of the Purchaser, unless the Collateral is replaced with items of equal or greater utility and value (which shall then be included as Collateral); (c) at its own cost and expense (i) to cause the QALICB to maintain, preserve and keep the Collateral in a manner consistent with the standard operating practices applicable to a first class operation, in good and substantial repair, working order and condition, ordinary wear and tear excepted, (ii) from time to time to make or cause to be made, all necessary and proper repairs, replacements, renewals, improvements and betterments thereto, and (iii) from time to time, to make such substitutions, additions, modifications and improvements as may be necessary and shall not impair the structural integrity, operating efficiency and economic value of the Collateral; (d) to comply, in all material respects, with all

acts, rules, regulations, orders, decrees and directions of any manufacturer, service provider or governmental authority applicable to the Collateral or any part thereof or to the operation of the Borrower's business; provided, however, that the Borrower may contest any such act, regulation, order, decree or direction in any reasonable manner which shall not adversely affect the Authority's or the Purchaser's rights or the first priority lien of its security interest in the Collateral; (e) after the occurrence and during the continuance of an Event of Default, all original documents evidencing right to payment, including but not limited to invoices, original orders, shipping and delivery receipts shall be delivered to the Purchaser upon demand of the Purchaser; (f) upon the request of the Purchaser to deliver all evidence of ownership in the Collateral, including certificates of title with the Authority's and the Purchaser's respective interests appropriately noted on the certificate and if any of the Collateral is located upon land which is the subject of a lease or mortgage, to deliver an agreement of subordination from the landlord or mortgagee providing any lien of such party shall be subordinate to the security interest of the Authority and/or the Purchaser granted herein, and (g) upon request of Purchaser, Purchaser shall have the right to inspect the Collateral. All alterations, replacements, substitutions, renewals or additions made pursuant to clause (c) of this Section 9.14 shall become and constitute a part of the Collateral. All Collateral which has been substituted for any removed, replaced or disposed of Collateral shall be of a value and quality or utility at least equal to that of the removed, replaced or disposed of Collateral, and shall be subject to the liens of the security interest granted to the Authority and/or the Purchaser hereunder. The Borrower shall not apply for a change in the zoning of the Project, the Premises without the prior written consent of the Purchaser.

At any time and from time to time, upon the demand of the Purchaser, the Borrower will, at the Borrower's expense, (i) immediately give, execute, deliver, pledge, endorse, file, and/or record any notice, statement, Financing Statement, instrument, document, chattel paper, agreement, or other papers that may be necessary or desirable, or that the Purchaser may request, in order to create, preserve, perfect, or validate any security interest granted pursuant hereto or to any of the other Loan Documents or intended to be granted hereunder or under any of the other Loan Documents or to enable the Purchaser to exercise or enforce its rights hereunder or under any of the other Loan Documents or with respect to such security interest; and (ii) keep, stamp, or otherwise mark any and all documents, instruments, chattel paper, and its books and records relating to the Collateral in such manner as the Purchaser may require. The Borrower hereby irrevocably appoints the Purchaser (and any of its attorneys, officers, employees, or agents) as its true and lawful attorney-in-fact, said appointment being coupled with an interest, with full power of substitution, in the name of the Borrower, the Purchaser, or otherwise, for the sole use and benefit of the Purchaser in its sole discretion, but at the Borrower's expense, to exercise, to the extent permitted by law, in its name or in the name of the Borrower or otherwise, the powers set forth herein or in any of the Loan Documents, whether or not any of the Obligations are due (i) to endorse the name of the Borrower upon any instruments of payment, freight, or express bill, bill of lading, storage, or warehouse receipt relating to the Collateral and to demand, collect, receive payment of, settle, or adjust all or any of the Collateral; (ii) to correspond and negotiate directly with insurance carriers; and (iii) to sign and file one or more Financing Statements naming the Borrower as debtor and the Purchaser as secured party to execute any notice, statement, instruments, agreement, or other paper that the Purchaser may require to create, preserve, perfect, or validate any security interest granted pursuant hereto or to any other Loan Documents or to enable the Purchaser to exercise or enforce its rights hereunder or under any

other Loan Documents or with respect to such security interest. Neither the Authority, the Agent, the Purchaser nor their attorneys, officers, employees, agents or other Indemnified Parties shall be liable for act, omissions, any error in judgment, or mistake in fact in its capacity as attorney-in-fact, except the Purchaser shall be liable for affirmative acts arising from the Purchaser's own gross negligence or willful misconduct. This power, being coupled with an interest is irrevocable until the Obligations have been fully satisfied. At the Purchaser's sole option, and without the Borrower's consent, the Purchaser may file a carbon, photographic, or other reproduction of this Bond Agreement or any Financing Statement executed pursuant hereto as a Financing Statement in any jurisdiction so permitting. The Purchaser is expressly authorized to file Financing Statements without the Borrower's signature. The Purchaser may (but shall not be obligated to) take any and all action that it deems necessary or proper to preserve its interest in the Collateral, including, without limitation, the payment of debts of the Borrower which might impair the Collateral or the Purchaser's security interest therein, the purchase of insurance on the Collateral, the repair or safeguarding of the Collateral, or the payment of taxes, assessments or other liens thereon. All sums so expended by the Purchaser shall be added to the Loan amount outstanding, shall be secured by the Collateral, and shall be payable on demand with interest from the date such sums are expended at the Default Rate.

Section 9.13. Borrower Account. The Borrower shall open and thereafter maintain such account or accounts as may be agreed upon by the Borrower and the Purchaser, which may or may not be its primary depository account or accounts, with the Purchaser for the term of the Loan. The Borrower shall give notice to the Purchaser when the Borrower Account has been established, and thereafter, payments hereunder and under the Note shall be made by direct charge to the Borrower Account. Borrower hereby consents to Purchaser making such charge.

Section 9.14. Financial Covenants. (a) Following the Completion Date, the Borrower shall cause the Premises to achieve a minimum Debt Yield of nine percent (9%), and an Authorized Borrower Representative shall certify to the Purchaser in writing on a quarterly basis commencing with the end of the first full quarter following the Completion Date that such minimum Debt Yield has been so achieved and setting forth the calculation thereof. For purposes of the forgoing, "Debt Yield" means current gross income (based on an annualized determination by the Purchaser of the prior three (3) month rent roll for the Premises) for the Premises less (i) a 5% vacancy allowance and (ii) the then current operating expenses of the Premises including a minimum management fee of 5% for a given twelve (12) month period, plus the Debt Service Subsidy Payments (to the extent the Bonds are eligible to receive such payments), divided by the then outstanding aggregate principal amount of the Bonds plus any accrued and unpaid interest thereon, all measured by the Purchaser in its reasonable discretion.

- (b) In the event Borrower fails to maintain the minimum Debt Yield set forth above, all available revenues that would otherwise be distributed to the Borrower under the terms of the Cash Management Agreement shall be paid to the Purchaser.

Section 9.15. Right to Reappraise. Upon thirty (30) days' notice to the Borrower, the Purchaser will have the right to conduct or have conducted by an independent appraiser acceptable to the Purchaser, appraisals of all remaining Collateral in a form and substance

satisfactory to the Purchaser. The costs of said appraisals will be paid for by the Borrower if such appraisal is required by any applicable law or regulation imposed with respect to the Purchaser or the Loan or upon the occurrence and continuance of an Event of Default.

Section 9.16. Change in Location. The Borrower shall not relocate the Project or any part thereof out of the State. The Borrower shall not relocate the project within the State without the prior written consent of an Authorized Authority Representative and an opinion of Bond Counsel that the relocation will not cause the Bonds to fail to be a “qualified bond” for purposes of Section 6431 of the Code, or otherwise make the Authority ineligible to receive Debt Service Subsidy Payments.

Section 9.17. Purchaser to Receive Requisitions. In the event the Bank is terminated or replaced as Administrative Agent under the Building Loan Agreement, the Borrower shall cause requisitions under such Agreement to be delivered to the Bank for review and approval contemporaneously with the delivery of such requisitions under the terms of the Building Loan Agreement.

## ARTICLE X

### **BORROWER'S REPRESENTATIONS, WARRANTIES AND COVENANTS TO THE AUTHORITY**

The Borrower hereby represents, warrants and covenants to the Authority and the Purchaser that:

Section 10.01. Inducement. The availability of financial assistance from the Authority as provided for herein has been an important inducement to the Borrower to undertake the Project and to locate the Project in the State.

Section 10.02. No Untrue Statements. The Borrower covenants that the representations, statements and warranties of the Borrower set forth in the Application, this Bond Agreement, or any other Loan Document (1) are true, correct and complete, (2) do not contain any untrue statement of a material fact, and (3) do not omit to state a material fact necessary to make the statements contained herein or therein not misleading or incomplete. The Borrower understands that all such statements, representations and warranties have been relied upon as an inducement by the Authority to issue the Bond and make the Loan and by the Purchaser to purchase the Bond.

Section 10.03. Project Users. The Borrower, as the fee owner of the Project, shall enter into a ground lease with the QALICB, which will enter into space leases with the Schools. Except for the Ground Leases and the leases with the Schools, prior to leasing, subleasing or consenting to the subleasing or assignment of any lease of all or any part of the Premises with respect to the Charter School Project, and upon the request of the Authority from time to time thereafter, the Borrower shall cause a Project Occupant Information Form to be submitted to the Authority by every prospective lessee, sublessee or lease assignee of the Premises. The Borrower shall not permit any such leasing, subleasing or assigning of leases that would impair the eligibility of the Bonds to receive the Debt Service Subsidy Payments, or that would impair the ability of the Borrower or the QALICB to (i) cause the Premises not to be operated as an authorized project under the Act, or (ii) be ineligible for any financing related thereto, including but not limited to, the Permitted Indebtedness and other indebtedness of the QALICB borrowed in connection with the Project.

Section 10.04. Maintain Existence, Merge, Sell, Transfer. The Borrower shall maintain its existence as a legal entity and shall not sell, assign, transfer or otherwise dispose of the Project or substantially all of its assets or change its corporate structure without the consent of the Authority and the Purchaser; provided however that the Borrower may merge with or into or consolidate with or transfer to another urban renewal entity, and the Project or this Bond Agreement may be transferred pursuant to such merger or consolidation without violating this section provided (1) the Borrower causes the proposed surviving, resulting or transferee company to furnish the Authority with a Change of Ownership Information Form (with a copy to the Purchaser); (2) the net worth of the surviving, resulting or transferee company following the merger, consolidation or transfer is equal to or greater than the net worth of the Borrower

immediately preceding the merger, consolidation or transfer; (3) any litigation or investigations in which the surviving, resulting or transferee company or its principals, officers and directors are involved, and any court, administrative or other orders to which the surviving, resulting or transferee company or its officers and directors are subject, relate to matters arising in the ordinary course of business; (4) the right to receive Debt Service Subsidy payments; (5) the surviving, resulting or transferee company assumes in writing the obligations of the Borrower under this Bond Agreement and the Note; (6) after the merger, consolidation or transfer, the Project shall be operated as a public school facility within the meaning of Section 54F of the Code and an authorized project under the Act; and (7) the written consent of the Purchaser to such action is furnished to the Authority.

Section 10.05. Relocate Project. The Borrower shall not relocate the Project or any part thereof out of the State. The Borrower shall not relocate the Project within the State without the prior written consent of an Authorized Authority Representative and the Purchaser and an opinion of Bond Counsel that the relocation will not affect the receipt of the Debt Service Subsidy payments with respect to the Bonds.

Section 10.06. Operate Project. The Borrower shall operate or cause the Project to be operated (i) as an authorized project for a purpose and use as provided for under the Act and (ii) in compliance with the terms of the Project Documents, the documents governing the Permitted Indebtedness and the regulations applicable and the documents governing the other indebtedness of the QALICB borrowed in connection with the Project, in each case until the expiration or earlier termination of this Bond Agreement.

Section 10.07. Annual Certification. On each anniversary hereof, the Borrower shall furnish to the Authority the following:

(a) a certification indicating whether or not the Borrower is aware of any condition, event or act which constitutes an Event of Default, or which would constitute an Event of Default with the giving of notice or passage of time, or both, under any of the Loan Documents;

(b) a written description of the present use of the Project and a description of any anticipated material change in the use of the Project or in the number of employees employed at the Project, and

(c) a report from every entity that leases or occupies space at the Project indicating the number of persons the entity employs at the Project.

Section 10.08. Preservation of Project. (A) The Borrower will at all times preserve and protect the Project in good repair, working order and safe condition, and from time to time will make, or will cause to be made, all needed and proper repairs, renewals, replacements, betterments and improvements thereto including those required after a casualty loss. The Borrower shall pay or cause to be paid all operating costs, utility charges and other costs and expenses arising out of ownership, possession, use or operation of the Project. Neither the

Authority nor the Purchaser shall have any obligation nor makes any warranties respecting the condition or operation of the Project.

(B) The Borrower will not use as a basis for contesting any assessment or levy of any tax the financing under this Bond Agreement or the issuance of the Bonds by the Authority and, if any administrative body or court of competent jurisdiction shall hold for any reason that the Premises or the Project are exempt from taxation by reason of the financing under this Bond Agreement or issuance of the Bonds by the Authority or other Authority action in respect thereto, the Borrower covenants to make payments in lieu of all such taxes in an amount equal to such taxes and, if applicable, interest and penalties.

Section 10.09. Access to the Project and Inspection. The Authority, the Purchaser and their duly authorized agents shall have the right, at all reasonable times upon the furnishing of notice that is reasonable under the circumstances to the Borrower, to enter upon the Project, the Premises and to examine and inspect the Project and the Collateral.

Section 10.10. Additional Information. Until payment in full of the Bonds shall have occurred the Borrower shall promptly, from time to time, deliver to the Authority or the Purchaser such information and materials relating to the Project and the Borrower as such party may reasonably request. Authorized representatives of the Authority and/or the Purchaser shall also be permitted, at all reasonable times, to examine the books and records of the Borrower with respect to the Project and the Collateral and the obligations of the Borrower hereunder and under the other Loan Documents, but any such representative shall not be entitled to access to trade secrets or other proprietary information (other than financial information of the Borrower).

Section 10.11. Project Sign. At the direction and in the discretion of the Authority, the Borrower will be required to post a sign indicating that the financing was provided in part by the Authority. The maintenance of the sign shall be at the expense of the Borrower.

Section 10.12. Affirmative Action and Prevailing Wage Regulations; Davis-Bacon Compliance. As determined by the Authority, the Borrower shall comply with the Authority's Affirmative Action and Prevailing Wage Rate Regulations and to that end copies of the Affirmation Action Regulations are available on the Authority's Internet web page at: [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction) or contacting: New Jersey Economic Development Authority - Internal Process Management - Gateway One, Suite 900, Newark, New Jersey 07102 Phone (973) 648-4130 or e-mail: [affirmativeaction@njeda.com](mailto:affirmativeaction@njeda.com). In any event, the Borrower shall pay the greater of the Prevailing Wage Rate, as defined in the Prevailing Wage Provision or the prevailing wage rate established under the Davis-Bacon Act (Subchapter IV of chapter 31 of title 40 of the United States Code).

## ARTICLE XI

### DEFAULTS AND REMEDIES

Section 11.01. Event of Default. Any one or more of the following events shall constitute an Event of Default hereunder and under the other Loan Documents:

- (a) Failure of Borrower to pay any installment of principal, sinking fund payment, interest or other costs or expenses on the date when it is due hereunder or under the Note.
- (b) Failure of Borrower to perform or comply with any of the agreements, conditions, covenants, provisions or stipulations contained in the Note, this Bond Agreement or in any other Loan Documents securing the Note, or delivered to the Authority or the Purchaser by Borrower in connection with the Note, and continuance of such failure uncured for fifteen (15) days from the date of notice thereof (other than for an Event of Default described in paragraph (a) hereof and any other payment default or a default which is not curable as determined by the Purchaser) provided that, in the event of a non-monetary Event of Default which is capable of being cured (as determined by the Purchaser), but which shall take longer than fifteen (15) days to cure, the Purchaser shall agree to extend the time for the cure to a total of thirty (30) days provided that the Borrower has promptly commenced the cure and is diligently pursuing same to the satisfaction of the Authority and the Purchaser.
- (c) If any representation or warranty by or on behalf of the Borrower made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Bond Agreement or any other Loan Documents shall prove to be false or misleading in any material respect when made.
- (d) Any assignment for the benefit of creditors made by Borrower (in general or with respect to the Borrower's properties) or the Borrower shall generally not pay, or shall be unable to pay, or shall admit in writing the Borrower's inability to pay the Borrower's debts as such debts become due.
- (e) Appointment of a receiver, liquidator or trustee for Borrower or of any of its properties; the filing by or against Borrower (in general or with respect to the Borrower's properties) of any petition for bankruptcy pursuant to the Federal Bankruptcy Code or any similar federal or State statute (and, in the case of any such petition filed against Borrower, such petition is not dismissed within forty-five (45) days); or the institution of any proceeding for the dissolution or liquidation of Borrower.
- (e) The occurrence of an event of default (beyond any applicable notice, grace or cure period) under any other obligation(s) or loan(s) due from the Borrower to the Purchaser.

(f) Any event or condition exists resulting in a material adverse effect on the business, operation, condition (financial or otherwise), assets or property of the Borrower or its Affiliates or the ability of the Borrower to satisfy its obligations under the Loan Documents.

(g) The transfer of title to or possession of any interest in all or any part of the Project or the Premises or the other Collateral, to any party, in contravention of this Agreement without the written consent of the Authority or the Purchaser.

(h) The Borrower shall enter into any additional financing on the Collateral, other than for Permitted Indebtedness without the consent of the Purchaser.

(i) The occurrence of an event of default under any of the other Loan Documents or the Project Documents.

(j) The occurrence of a Determination of Ineligibility.

(k) The failure by the Borrower to cause an Affiliate thereof to close the Residential Loan by December 31, 2012 and the Borrower has not increased the amount of cash collateral by \$1,000,000 pursuant to the Deposit Account Security Agreement and the Guaranties.

Section 11.02. Purchaser's Remedies. Upon the occurrence of an Event of Default, subject to the Intercreditor Agreement and the Ground Lease, and at any time thereafter during the continuance of such Event of Default, the Purchaser may take one or more of the following remedial steps:

(a) by notice to the Authority and the Borrower, declare the entire principal amount of the Note to be due and payable forthwith, whereupon the Note shall become forthwith due and payable, both as to principal and interest, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the Note to the contrary notwithstanding;

(b) take any action at law or in equity to collect the payments then due and thereafter to become due under the Note or any other Loan Document, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under any of the Loan Documents;

(c) take possession of the Borrower's interest in any and all of the Collateral without terminating this Bond Agreement, and pursue remedies of a creditor under the Uniform Commercial Code as adopted in the State and assign, sell or lease, or otherwise dispose of the Borrower's interest in the Collateral for the account of the Borrower, and the Borrower shall then be liable for the amounts due under this Bond Agreement and the Note and the other Loan Documents less amounts received pursuant to such assignment or contract of sale or lease or other disposition of the Borrower's interest in the Collateral and the amount of such difference shall then be immediately due and payable. The Borrower hereby agrees that, in the event the Purchaser does take possession of any or all the Collateral as provided herein, the obligation of

the Borrower to pay such amounts due or to become due under this Bond Agreement and the Note shall survive such repossession;

(d) without further notice or demand or legal process, enter upon any premises of the Borrower and take possession any or all of the Collateral, all records and items relating to the Collateral and, at the Purchaser's request, the Borrower will assemble the Collateral and such records and items relating to the Collateral and deliver them to the Purchaser; and

(e) with or without judicial process, sell, lease or otherwise dispose of any or all of the Collateral at public or private sale or proceedings, by one or more contracts, in one or more parcels, at the same or different times and places, with or without having the Collateral at the place of sale or other disposition, to such Persons, for cash or credit or for future delivery and upon such other terms, as the Purchaser may, in its sole discretion, deem best in each such matter. The purchaser of any of the Collateral at any such sale shall hold the same free of any equity of redemption or other right or claim of the Borrower, all of which, together with all rights of stay, exemption or appraisal under any statute or other law now or hereafter in effect, the Borrower hereby unconditionally waives to the fullest extent permitted by law. If any of the Collateral is sold on credit or for future delivery, the Purchaser shall not be liable for the failure of the purchaser to pay for same and, in the event of such failure, the Purchaser may resell such Collateral.

(f) The Borrower further agrees that notice of the time after which any private sale or other intended disposition or action relating to any of the Collateral is to be made or taken, shall be deemed commercially reasonable notice thereof, and shall satisfy the requirements of any applicable statute or other law, if such notice is delivered or mailed (by ordinary first class mail, postage prepaid) not less than five (5) Business Days prior to the date of the sale, disposition or other action to which the notice related. The Purchaser shall not be obligated to make any sale or other disposition or take other action pursuant to such notice and may, without other notice or publication, adjourn or postpone any public or private sale or other disposition or action by announcement at the time and place fixed therefor, and such sale, disposition or action may be held or accomplished at any time or place to which the same may be so adjourned or postponed.

(g) The Purchaser may purchase any or all of the Collateral at any public sale and may purchase at private sale any of the Collateral that is of a type customarily sold in a recognized market or the subject of widely distributed price quotations or as may be further permitted by law. The Purchaser may make payment of the purchase price for any Collateral by credit against the then outstanding amount of the Obligations.

(h) The Purchaser may apply the funds in any account maintained under this Agreement or, at its discretion, retain any or all of the Collateral, and apply the same in satisfaction of part or all of the Obligations.

(i) The Purchaser may settle, renew, extend, compromise, compound, exchange or adjust claims in respect of any of the Collateral or any legal proceedings brought in respect thereof.

(j) The Purchaser may demand, sue for, collect or receive any money or property, at any time payable or receivable on account of or in exchange for, or make any compromises they deem desirable, including, without limitation, extending the time of payment, arranging for payment in installments, or otherwise modifying the terms or rights with respect to any of the Collateral, all of which may be without notice to or consent by the Borrower and without otherwise discharging or affecting the obligations hereunder, the Collateral or the security interest therein or lien thereon.

(k) Endorse the name of the Borrower upon any and all checks, drafts, money orders, and other instruments for the payment of monies which are payable to the Borrower and constitute proceeds of the Collateral.

(l) Notify account debtors to the Borrower to make payment directly to the Purchaser or its designee.

Under no circumstances shall the Purchaser be or become liable to the Borrower or anyone else for any reason arising out of any damages to or suffered by the Borrower resulting from or in any way connected with the Purchaser's pursuit of any of the remedies set forth herein.

Upon the institution of any such action hereunder by the Purchaser, the Purchaser shall be entitled to the appointment of a receiver for the Collateral without proof of the depreciation of the value of same.

If the Purchaser shall have proceeded to enforce its rights under this Bond Agreement or the other Loan Documents and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Purchaser, then the parties hereto shall be restored respectively to their several positions and rights hereunder, and all obligations, rights, remedies and powers of the parties hereto shall continue as though no such proceedings had taken place.

Without limiting the generality of the foregoing, upon the happening of any Event of Default, all of the Borrower's legal or equitable right, title and interest in the Premises, and the Borrower's right to possession thereof may be terminated by an action for foreclosure or repossession in accordance with the statutes of the State.

For so long as the Purchaser is the holder of the Bonds, the Purchaser or the Agent on behalf of the Purchaser will have the right to immediately and without notice or other acts to set off against any of the Borrower's obligations to the Purchaser any sum owed by the Purchaser or any of its affiliates in any capacity to the Borrower whether due or not, or any property of the Borrower's in the possession of the Purchaser or any of its affiliates, and the Purchaser will be deemed to have exercised such right of set off and to have made a charge against any such sum or property immediately upon the occurrence of any Event of Default, even though the actual book entries may be made at some time subsequent thereto.

Without limiting the generality of the foregoing, if the Borrower commits a breach or threatens to commit a breach, of any of the provisions of this Bond Agreement or any other Loan Document, the Purchaser shall have the right and remedy, without posting bond or other security, to have the provisions of this Bond Agreement or any other Loan Document specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Purchaser and that money damages will not provide an adequate remedy therefor.

Section 11.03. Authority's Remedies. (a) Upon the occurrence of an Event of Default as set forth in Section 11.01, and at any time thereafter during the continuance of such Event of Default, the Authority may call and cancel the Bonds by giving written notice in accordance with the provisions of Section 12.01. The Borrower, the Purchaser and any assigns hereby expressly agree that the Bonds may be called and cancelled by the Authority and upon the date specified in the notice from the Authority (the "Cancellation Date"), which shall be at least thirty (30) and no more than sixty (60) days after the giving of such notice, the Bonds will be called and cancelled. The Purchaser will deliver the Bonds to the Authority for cancellation upon the Cancellation Date, but even if such delivery does not occur, the Bonds will be considered cancelled and of no further force or effect on the Cancellation Date.

(b) If the Borrower commits a breach or threatens to commit a breach, of any of the provisions of this Bond Agreement or any other Loan Document, the Authority shall have the right and remedy, without posting bond or other security to have the provisions of this Bond Agreement or any other Loan Document specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Authority and that money damages will not provide an adequate remedy therefor.

Section 11.04. Effect of Cancellation of the Bonds. (i) Upon the Cancellation Date, the Note will evidence the indebtedness from the Borrower to the Purchaser and all of its terms, including the interest rate at the Default Rate and payment terms therein specified, will control the obligations of the Borrower to the Purchaser; provided that such cancellation shall not limit the rights of the Purchaser to pursue its rights and remedies against the Borrower pursuant to 11.02 hereof or of any of the other Loan Documents.

(ii) If the Bonds are cancelled and the interest rate on the Note is increased to the Taxable Rate (as defined in the Note) or the Default Rate, as determined by the Purchaser, the monthly payment shall be modified to reflect the difference between the interest stated in the Note and the increased interest rate called for in this Section 11.04. This condition may be reflected in a separate agreement to be prepared by Counsel for the Purchaser at the Borrower's expense (it being understood however, that the failure to prepare any such separate agreement shall not be deemed to affect the automatic operation of this Section in any way). The Authority will no longer be a party to this Bond Agreement and shall have no further rights with respect thereto (except its right to enforce the Borrower's obligation to pay the Rebate Amount, obtain outstanding fees and to enforce its right of indemnification, which shall survive) and shall be released of any and all debts, liabilities and obligations to any party under this Bond Agreement, the Bond or any other Loan Document. The Authority and the Purchaser shall execute and

deliver to each other such other documents and agreements as the other may reasonably request in order to evidence the cancellation of the Bond and the withdrawal of the Authority from the transaction.

(iii) Upon cancellation of the Bond pursuant to the provisions hereof, the Authority hereby agrees that the Purchaser (except as stated above) shall automatically be vested with all of the Authority's right, title and interest in and to the Loan Documents. Any amounts remaining in any account maintained hereunder on the Cancellation Date after deduction of amounts which may be due the Authority pursuant to the terms of this Bond Agreement are assigned to the Purchaser. The Authority hereby authorizes the Agent to pay to the Purchaser any such amounts remaining in the accounts maintained hereunder on the Cancellation Date after payments which may be due the Authority.

(iv) In the event that there is a dispute among any of the parties concerning the right of the Authority to cancel the Bond pursuant to the provisions of this Section, the Borrower shall nevertheless comply with the terms of the Note as hereinabove amended and make all payments required thereunder from and after the Cancellation Date directly to the Purchaser. If a court of competent jurisdiction determines finally that the Authority's attempted cancellation of the Bond violated the terms of this Agreement, the Bond will be reinstated in accordance with the final order of the court, but until such final order is made, the Borrower will continue to comply with the terms of the Note as hereinabove amended. If the court so directs by final order, any overpayment by the Borrower will be returned to it by the Bond Purchaser upon reinstatement of the Bond (after deduction, if applicable, of all costs of the Authority and the Purchaser).

Section 11.05. No Remedy Exclusive. No remedy herein conferred or reserved to the Authority or the Purchaser 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 Bond 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 Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Purchaser to exercise any remedy reserved to it in this Article XI, it shall not be necessary to give notice, other than such notice as may be required in this Article XI.

Section 11.06. Waiver of Event of Default. Notwithstanding anything in this Bond Agreement or in any of the other Loan Documents to the contrary, neither the Agent nor the Purchaser shall have the right to waive an Event of Default under any of the Loan Documents which arises out of a violation of a Reserved Right without the prior written consent of the Authority, which the Authority shall give in its sole and complete discretion. Notwithstanding anything herein or in any other Loan Document to the contrary, nothing herein shall affect the Authority's unconditional right to enforce its Reserved Rights.

Section 11.07. Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should default under any of the provisions of this Bond Agreement or other Loan

Documents and either the Authority, the Agent or the Purchaser shall require and employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Borrower or enforcement of the Bonds under any Loan Document, the Borrower agrees that it will, on demand therefor, pay to the Authority, the Agent or the Purchaser, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred by the Authority, the Agent or the Purchaser.

Section 11.08. Immunity of the Authority. In the exercise of the powers of the Authority and its members, officers, employees or agents under this Bond Agreement, and including without limitation the application of moneys, the investment of funds, the assignment or other disposition of the Collateral in the event of default by the Borrower, neither the Authority nor its members, officers, employees or agents shall be accountable to the Purchaser, the Agent or the Borrower for any action taken or omitted by it or them in good faith and believed by it or them to be authorized or within the discretion or rights or powers conferred. The Authority and its members, officers, employees and agents shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it and they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

Section 11.09. No Additional Waiver Implied by One Waiver. In the event any agreement contained in any Loan Document should be breached by any party and thereafter such breach should be waived by any party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder or thereunder.

**ARTICLE XII**

**MISCELLANEOUS**

Section 12.01. Notice. Any notice or other communication to the parties to this Bond Agreement shall be in writing and conclusively deemed to have been received by, and to be effective on the date on which delivered to it, at the address listed below or, if sent by certified mail, postage prepaid, on the third Business Day after the day on which mailed, or if sent by nationally recognized overnight courier service, on the first Business Day following pick up by such courier service, addressed to the party at said address:

Authority: New Jersey Economic Development Authority  
36 West State Street  
PO Box 990  
Trenton, New Jersey 08625  
Attn: Director of Bonds and Incentives

Borrower: RBH-TRB East Mezz Urban Renewal Entity, LLC  
c/o RBH Group  
16 West 36 Street, Suite 801  
New York, New York 10018  
Attn: Mr. Ron Beit

With a copy to: McManimon & Scotland LLC  
1037 Raymond Blvd Suite 400  
Newark, New Jersey 07102  
Attn: Leah Sandbank, Esq.

Purchaser: TD Bank, N.A.  
317 Madison Avenue  
New York, New York 10017  
Attn: Matthew Schatz, Vice President

With a copy to: Windels Marx Lane & Mittendorf, LLP  
120 Albany Street Plaza  
New Brunswick, NJ 08901  
Attn: John Bitar, Esq.

Agent: TD Bank, N.A.  
317 Madison Avenue  
New York, New York 10017  
Attn: Matthew Schatz, Vice President

The addresses set forth hereinabove may be changed pursuant to notice given in accordance with this Section 12.01.

Section 12.02. Concerning Successors and Assigns; Participations. All covenants, agreements, representations and warranties made herein, in the other Loan Documents and in the certificates delivered pursuant hereto and thereto shall survive the making of the Loan herein contemplated and the execution and delivery of the Note and shall continue in full force and effect so long as the Obligations are outstanding and unpaid and, as between the Borrower and the Purchaser (including, without limitation, the provisions contained in this Bond Agreement with respect to the Collateral and the Purchaser's liens, rights and remedies with respect thereto), so long as the obligations of the Borrower created pursuant to the Loan Facilities and secured by the Collateral remain outstanding and unpaid. Whenever in this Bond Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Bond Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Authority and the Purchaser.

The Purchaser reserves the right to sell a participation interest in the Bond, in whole or in part, to one or more purchasers, whether related or unrelated to the Purchaser. The Purchaser may supply any potential participant all information, financial or otherwise, pertaining to the Borrower or any other entity which is owned or controlled by it, which the Purchaser has in its possession. Any reference to the Purchaser shall also be deemed a reference to the initial holder of the Bond and/or the assignee thereof if same is assigned or sold.

Section 12.03. Costs and Expenses. All expenses in connection with the preparation, execution, delivery, recording and filing of this Bond Agreement, the Note and other Loan Documents and in connection with the preparation, issuance and delivery of the Bonds, the Authority's fees, the fees and expenses of Bond Counsel, the fees and expenses of the Purchaser and the fees and expenses of Counsel for the Purchaser shall be paid directly by the Borrower. The Borrower shall also pay throughout the term of the Bonds the Authority's annual fees and expenses and the Purchaser's annual and special fees and expenses under this Bond Agreement, the Note and the other Loan Documents, including, but not limited to, reasonable attorney's fees and all costs of issuing the Bonds, and any costs and expenses in connection with any approval, consent or waiver under, or modification of, any such document.

Section 12.04. New Jersey Law Governs. This Bond Agreement and the other Loan Documents shall be construed in accordance with and governed by the laws of the State (without regard to the State's conflicts of laws principles).

Section 12.05. Modification in Writing. The waiver of any provision of this Bond Agreement or any other Loan Document, or consent to any departure by the Borrower therefrom shall, in no event, be effective unless the same shall be in writing and signed by the Authority, the Purchaser and the Borrower. Any such waiver shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon the Borrower in any case shall entitle it to any other further notice or demand in the same circumstances.

Section 12.06. Failure to Exercise Rights. Neither any failure nor any delay on the part of the Authority, the Purchaser or the Borrower in exercising any right, power or privilege hereunder or under any other Loan Document shall operate as a waiver hereof or thereof, nor

shall a single or partial exercise thereof preclude any other or further exercise of any other right, power or privilege.

Section 12.07. Assignment of Loan Documents. The Borrower acknowledges that the Loan Documents are being assigned, concurrently with the execution hereof, by the Authority to the Purchaser as security for the Bonds pursuant to the terms of the Authority's Assignment. The Authority retains the Reserved Rights and the right, jointly and severally with the Purchaser, to specifically enforce the provisions contained in the Loan Documents.

The Borrower assents to such assignment and hereby agrees that, as to the Purchaser, its obligation to make payments under the Loan Documents shall be absolute, and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by the Authority of any duty or obligation to the Borrower, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the Borrower by the Authority.

Section 12.08. Further Assurances and Corrective Instruments. The Authority, the Purchaser and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or the Collateral or for carrying out the intention of or facilitating the performance of this Bond Agreement.

Section 12.09. Authority May Rely on Certificates. The Authority, Agent and/or the Purchaser shall be protected and shall incur no liability in acting or proceeding, or in not acting or not proceeding, in good faith and in accordance with the terms of this Bond Agreement, upon any resolution, order, notice request, consent, waiver, certificate, statement, affidavit, requisition, bond or other paper or document which it shall in good faith believe to be genuine and to have been adopted or signed by the proper board or Person or to have been prepared and furnished pursuant to any of the provisions of this Bond Agreement, or upon the written opinion of any attorney, engineer, accountant or other expert believed by it to be qualified in relation to the subject matter, and the Authority, Agent and/or the Purchaser shall not be under any duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument.

Section 12.10. Captions. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Bond Agreement.

Section 12.11. Severability. In the event any provision of this Bond Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render any other provision hereof unenforceable.

Section 12.12. Counterparts. This Bond Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 12.13. Effective Date and Term. This Bond Agreement shall become effective upon its execution and delivery by the parties hereto, and all representations and warranties shall be deemed to have been made as of such date of execution and delivery and shall remain in full force and effect from the date hereof and, subject to the provisions hereof, shall expire on such date as the Bonds and the interest thereon, the Note and the interest thereon and all other expenses, penalties, fees, additions to tax or sums to which the Authority and the Purchaser (including those arising under the Loan Facilities) are entitled, have been fully paid and retired.

Section 12.14. Application of New Jersey Contractual Liability Act. Notwithstanding anything to the contrary contained herein or in the other Loan Documents, this Bond Agreement and the other Loan Documents are subject to the limitations of the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and the New Jersey Tort Claims Act, N.J.S.A. 59:2-1, et seq. While the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. is not applicable by its terms to claims arising under contracts with the Authority, the Borrower, the Agent and the Purchaser hereby agree that such statute (except N.J.S.A. 59:13-9) shall be applicable to all claims arising against the Authority under this Bond Agreement and the other Loan Documents.

Section 12.15. Waiver of Jury Trial. **THE BORROWER HEREBY WAIVES ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN ANY AND ALL DISPUTES RELATING TO, OR ARISING UNDER, THIS BOND AGREEMENT AND/OR THE NOTE.**

**IN WITNESS WHEREOF**, the parties hereto have executed this Bond Agreement and, where applicable, attested, as of the date first written above.

ATTEST:

NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY

\_\_\_\_\_  
Gregory Ritz  
Assistant Secretary

By: /s/ John J. Rosenfeld  
\_\_\_\_\_  
John J. Rosenfeld  
Director of Bonds and Incentives

[AUTHORITY'S SIGNATURE PAGE TO BOND AGREEMENT]

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WITNESS:

RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC

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

By: /s/ Ron Beit-Halachmy  
Ron Beit-Halachmy, Authorized Signatory

[BORROWER'S SIGNATURE PAGE TO BOND AGREEMENT]

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WITNESS:

TD BANK, N.A.

/s/ John Bitar  
John Bitar, Esq

By: /s/ Matthew Schatz  
Matthew Schatz  
Vice President

[PURCHASER'S SIGNATURE PAGE TO BOND AGREEMENT]

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The duties of the Agent as set forth in the foregoing Bond Agreement dated as of December 1, 2011 are hereby accepted this 29<sup>th</sup> day of December, 2011.

TD BANK, N.A.,  
as Agent

By: /s/ Matthew Schatz  
Matthew Schatz  
Vice President

[AGENT'S SIGNATURE PAGE TO BOND AGREEMENT]

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EXHIBIT A

BORROWER'S COMPLETION CERTIFICATE

TO: TD Bank, N.A.  
317 Madison Avenue  
New York, New York 10017

Pursuant to Section 5.06 of the Bond Agreement by and among the New Jersey Economic Development Authority (the "Authority"), RBH-TRB East Mezz Urban Renewal Entity, LLC (the "Borrower"), and TD Bank, N.A. ("the Purchaser"), dated as of December 1, 2011 (the "Bond Agreement"), the undersigned, an Authorized Borrower Representative, the Closing Date, certifies that (all capitalized undefined terms used herein shall have the same meaning ascribed to them in the Bond Agreement):

- (i) the restoration of the Project was completed as of \_\_\_\_\_, 20\_\_\_\_ ;
- (ii) the cost of all labor, services, materials and supplies used in the restoration of the Project have been paid, or will be paid from amounts retained by TD Bank, N.A., the Agent, at the Borrower's direction for any cost of the restoration of the Project not now due and payable or, if due and payable, not presently paid;
- (iii) the equipment necessary for the restoration of the Project, if any (the "Project Equipment") has been installed to Borrower's satisfaction; such Project Equipment so installed is suitable and sufficient for the efficient operation of the Project for the intended purposes and all costs and expenses, if any, incurred in the acquisition and installation of such Project Equipment have been paid, or will be paid from amounts retained by the Agent at the Borrower's direction for any cost of the restoration of the Project not now due and payable or, if due and payable, not presently paid;
- (iv) the Project is being operated as an authorized "project" under the Act and substantially as proposed in the Borrower's application to the Authority, as amended and supplemented in writing;
- (v) If determined by the Authority to be applicable, the Borrower has complied with the Authority's Affirmative Action and Prevailing Wage Rate Regulations in using the proceeds of insurance or condemnation awards for the restoration of the Project (copies of the Affirmation Action Regulations were available on the Authority's Internet web page at: [www.njeda.com/affirmativeaction](http://www.njeda.com/affirmativeaction) or by contacting: New Jersey Economic Development Authority - Internal Process Management - Gateway One,

Suite 900, Newark, New Jersey 07102 Phone (973) 648-4130 or by e-mail: affirmativeaction@njeda.com).

I acknowledge that any amount hereafter remaining in the Escrow Accounts (except amounts therein sufficient to cover costs of the restoration of the Project not now due and payable or not presently paid) shall be used by the Agent to make prepayments of principal only on the Loan as provided in Section 5.06 of the Bond Agreement and shall not be invested at a yield materially higher than the yield on the Bond. This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC

By: \_\_\_\_\_  
Authorized Representative

Dated: \_\_\_\_\_

Approved:  
TD BANK, N.A., as Purchaser

By: \_\_\_\_\_  
Authorized Representative

EXHIBIT B

**POST ISSUANCE COMPLIANCE  
USE OF QUALIFIED SCHOOL CONSTRUCTION BOND FINANCED PROPERTY AND PROCEEDS**

The Borrower agrees that, on or prior to the occurrence of any of the following events, which are not otherwise addressed in the Borrower's tax certificate for the Bonds, the Borrower will notify the Authority in accordance with Section 9.03(p):

1. **Change in use of the Bond Financed Property** — if any portion of the Bond Financed Property will be used in a manner other than as a public school facility within the meaning of Section 54F of the Code (a "Public School Facility");

2. **Leases of the Bond Financed Property** — if any portion of the Bond Financed Property is to be leased, or otherwise subject to an agreement which give possession of any portion of the Bond Financed Property to anyone, for use other than as a Public School Facility;

3. **Sinking fund or pledge fund** — if the Borrower, or any organization related to the Borrower, identifies funds which are expected to be use to pay debt service on the Bonds or secure the payment of debt service on the Bonds, other than those funds or accounts described in the bond documents for the Bonds.

4. **Compliance with Davis-Bacon** — if the Borrower fails to comply with the prevailing wage rate established under the Davis-Bacon Act (Subchapter IV of chapter 31 of title 40 of the United States Code).

Exh. B-1

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SCHEDULE A

Exceptions to Section 8.10

NONE

Sch. A-1

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SCHEDULE B

(Intentionally Omitted)

Sch. B-1

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SCHEDULE C

Debt Service Schedule

See Attached Schedule.

Sch. C-1

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AFTER THE ENDORSEMENT OF THIS NOTE AS HEREIN PROVIDED, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO A SUCCESSOR OF THE PURCHASER UNDER THE BOND AGREEMENT REFERRED TO HEREIN.

**NOTE**

\$22,748,000

Newark, New Jersey  
December 29, 2011

**FOR VALUE RECEIVED, RBH-TRB EAST MEZZ URBAN RENEWAL ENTITY, LLC** (the “Borrower”) promises to pay to the order of the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (the “Authority”) at its offices located at 36 West State Street, PO Box 990, Trenton, New Jersey, the sum of TWENTY-TWO MILLION SEVEN HUNDRED FORTY-EIGHT THOUSAND DOLLARS (\$22,748,000) in lawful money of the United States. Except as hereinafter provided, this Note shall bear interest (“Subsidy Interest”) from the date hereof to the Maturity Date (as defined below) at the fixed rate of 4.99% per annum (the “Subsidy Interest Rate”). In addition to Subsidy Interest, this Note shall bear interest from the date hereof to the Maturity Date at the fixed rate equal to 0.51% per annum (the “Additional Interest Rate”; and together with the Subsidy Interest Rate, the “Initial Rate”). Interest shall be computed on an actual/360 day basis (i.e., interest for each day during which the principal amount hereof, or any part thereof, is outstanding shall be computed at the current interest rate divided by 360). From the Reset Date, this Note shall bear interest at the Reset Rate (as defined below). This Note shall be subject to mandatory tender by the holder hereof on the Reset Date as set forth herein.

Interest accruing hereon from the date hereof at the Subsidy Interest Rate shall be paid on the first Business Day of each January, April, July and October in each year to December 1, 2030 (the “Maturity Date”), commencing on April 1, 2012. Interest accruing hereon from the date hereof at the Additional Interest Rate shall be paid on the first Business Day of each month to the Maturity Date, commencing on February 1, 2012. In addition to the foregoing interest payments, principal shall be payable in consecutive monthly installments as set forth in the attached Schedule A, which amounts shall be payable on the first day of each month, commencing on December 1, 2013, to and including the Maturity Date. On the Maturity Date, if not sooner paid as provided in this Note, all remaining principal and accrued interest shall be due and payable.

“Reset Date” as used herein shall mean December 1, 2018. “Reset Rate” as used herein shall mean that fixed interest rate necessary to remarket the Bonds at par on the Reset Date for the remaining term of the Bonds, or such other interest rate as may be approved in the written opinion of Bond Counsel.

Upon establishment of the Debt Service Fund as provided in Section 4.02 of the Bond Agreement (as hereinafter defined) the Borrower shall deposit all payments due hereunder in such Fund as provided in the Bond Agreement. The Borrower shall maintain sufficient funds in the Debt Service Fund for such payments.

This Note may be prepaid by the Borrower in whole or in part without penalty or premium at any time and from time to time upon a minimum of three (3) Business Days’ prior

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written notice to the Purchaser, any partial prepayment amount to be applied first to outstanding fees and expenses, second to interest accrued to the date of payment and third to the principal payments due on this Note, on a pro rata basis. The Borrower shall pay to the Purchaser, upon request of the Purchaser, such amount or amounts as shall be sufficient (in the reasonable opinion of the Purchaser) to compensate it for any loss, cost, or expense incurred as a result of: (a) any prepayment of the Loan on a date other than the last day of an Interest Period; or (b) any failure by the Borrower to pay the Loan on the date for payment specified in the Borrower's written notice.

This Note is the Note referred to in the Bond Agreement (the "Bond Agreement") dated as of December 1, 2011 by and among the Borrower, the Authority and TD Bank, N.A. (the "Purchaser"), and is subject to all the terms and provisions of said Bond Agreement, including the defined terms used herein as defined therein.

In the event of damage, destruction or taking, as described in Article IV of the Bond Agreement, the proceeds of any insurance or condemnation award shall be applied in accordance with Intercreditor Agreement as described in Section 4.10 of the Bond Agreement.

A late payment penalty shall be payable by the Borrower to the Authority for any item or installment, or part thereof, not paid within fifteen (15) days of the date such item becomes due and payable. Such late payment shall equal six (6%) percent of the amount of the late payment.

The Purchaser shall have the option to declare the entire outstanding principal balance of this Note, together with all outstanding interest, due and payable in full on or after January 31, 2012, upon the failure of the Borrower to meet the conditions set forth in Section 2.07 of the Bond Agreement and to close the NMTC Transaction (as defined in the Bond Agreement). Written notice of the Purchaser's exercise of such optional loan call shall be provided by the Purchaser to the Borrower and the Authority upon a minimum of two (2) days' notice, whereupon all outstanding principal and accrued interest shall be due and payable in full on the loan call date set forth in such notice.

This Note shall be subject to mandatory tender on the Reset Date, at which time the entire outstanding principal balance of this Note, together with all outstanding interest, shall be due and payable in full. Notwithstanding the foregoing, the Purchaser may waive such mandatory tender by providing written notice of such election to the Borrower and the Authority not less than sixty (60) days prior to the Reset Date (or such shorter period of time as may be acceptable to the Authority and the Borrower).

If any Event of Default occurs, the principal of and interest on this Note may become payable at the times, in the manner, with the effect and subject to the conditions provided in the Bond Agreement.

To the extent permitted by law, whenever there shall have occurred and then be continuing any Event of Default under this Note or the Bond Agreement, or non-payment upon demand, at the option of the Holder hereof, this Note shall bear interest from the date the Event of Default first occurred to the date payment in full is received by the holder of this Note at the rate of interest then in effect plus four percent (4%) per annum (the "Default Rate"). The

Borrower acknowledges that: (i) such additional rate is a material inducement to the Authority to make the Loan; (ii) the Authority would not have made the loan in the absence of the agreement of the Borrower to pay such Default Rate; (iii) such additional rate represents compensation for increased risk to the Authority that the Loan will not be repaid; and (iv) such rate is not a penalty and represents a reasonable estimate of (a) the cost to the Authority and its assigns in allocating its resources (both personnel and financial) to the ongoing review, monitoring, administration and collection of the Loan and (b) compensation to the Authority and its assigns for losses that are difficult to ascertain.

The undersigned, and all endorsers (if any) of this Note waive presentment, demand for payment, protest and notice of dishonor of this Note, and authorize the Holder, without notice or further consent, to grant extensions of time in the payment of any moneys payable under this Note or to waive compliance with any of the provisions of this Note without in any way affecting the liability of the Borrower and any endorsers hereof.

**BORROWER HEREBY WAIVES ALL RIGHTS IT MAY HAVE TO A JURY TRIAL IN ANY AND ALL DISPUTES RELATING TO, OR ARISING UNDER, THIS NOTE AND/OR THE BOND AGREEMENT.**

If suit is brought to collect this Note or any part hereof, Borrower expressly agrees to pay all of the Holder's costs and expenses of collection including reasonable attorneys' fees.

All provisions of this Note and the Loan Documents (as defined in the Bond Agreement) are expressly subject to the condition that in no event, whether by reason of acceleration of maturity of the indebtedness evidenced hereby or otherwise, shall the amount paid or agreed to be paid by the undersigned hereunder and deemed interest under applicable law exceed the maximum rate of interest on the unpaid principal balance of this Note allowed by applicable law (the "Maximum Allowable Rate"), which shall mean the law in effect on the date of this Note, except that if there is a change in such law which results in a higher Maximum Allowable Rate being applicable to this Note, then this Note shall be governed by such amended law from and after its effective date. In the event that fulfillment of any provision of this Note or the Loan Documents results in the applicable Initial Rate or Reset Rate hereunder being in excess of the Maximum Allowable Rate, the obligation to be fulfilled shall automatically be reduced to eliminate such excess. If, notwithstanding the foregoing, the Holder of this Note receives any amount which under applicable law would cause the applicable Initial Rate or Reset Rate hereunder to exceed the Maximum Allowable Rate, the portion thereof which would be excessive shall automatically be applied to and be deemed a prepayment of the unpaid principal balance of this Note and not a payment of interest and in the event there is no unpaid principal balance of this Note, such excess shall be returned to Borrower.

This Note shall be governed and construed in accordance with the laws of the State of New Jersey.

**IN WITNESS WHEREOF**, the Borrower has executed and delivered to the Authority this Note on the day and year first above written.

WITNESS:

RBH-TRB EAST MEZZ URBAN RENEWAL  
ENTITY, LLC

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

By: /s/ Ron Beit-Halachmy  
Ron Beit-Halachmy, Authorized Signatory

[BORROWER'S SIGNATURE PAGE TO NOTE]

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ENDORSEMENT

Pay to the order of TD Bank, N.A., as Purchaser under the Bond Agreement dated as of December 1, 2011, between the Authority, the Borrower and the Purchaser, without recourse. This endorsement is given and made without any warranty as to the authority and genuineness of the signature of the maker of the foregoing Note.

This the 29th day of December, 2011.

NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY

By: /s/ John J. Rosenfeld  
John J. Rosenfeld  
Director of Bonds and Incentives

[AUTHORITY'S ENDORSEMENT PAGE TO NOTE]

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**SCHEDULE A**

**Sinking Fund Installments**

Date                      Amount

Sch. A-1

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## CERTIFICATION

I, Jeffrey A. Gould, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended December 31, 2011 of BRT Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 9, 2012

/s/ Jeffrey A. Gould

Jeffrey A. Gould  
President and Chief Executive Officer

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## CERTIFICATION

I, David W. Kalish, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended December 31, 2011 of BRT Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 9, 2012

/s/ David W. Kalish

David W. Kalish

Senior Vice President - Finance

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## CERTIFICATION

I, George Zweier, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the quarter ended December 31, 2011 of BRT Realty Trust;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 9, 2012

/s/ George Zweier

George Zweier

Vice President and Chief Financial Officer

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CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

I, Jeffrey A. Gould, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended December 31, 2011 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: February 9, 2012

/s/ Jeffrey A. Gould  
Jeffrey A. Gould  
President and Chief Executive Officer

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CERTIFICATION OF SENIOR VICE PRESIDENT-FINANCE

PURSUANT TO 18 U.S.C. SECTION 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

I, David W. Kalish, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended December 31, 2011 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: February 9, 2012

/s/ David W. Kalish

David W. Kalish

Senior Vice President - Finance

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CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)

I, George Zweier, do hereby certify, pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of my knowledge, based upon a review of the Quarterly Report on Form 10-Q for the quarter ended December 31, 2011 of BRT Realty Trust (“the Registrant”), as filed with the Securities and Exchange Commission on the date hereof (the “Report”):

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

Date: February 9, 2012

/s/ George Zweier  
George Zweier  
Vice President and Chief Financial Officer

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**brt-20111231.xml**

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**brt-20111231.xsd**

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**brt-20111231\_cal.xml**

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**brt-20111231\_lab.xml**

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**brt-20111231\_pre.xml**

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**brt-20111231\_def.xml**