

BRT REALTY TRUST  
Form S-4/A  
January 12, 2017  
TABLE OF CONTENTS

**AS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ON JANUARY 12, 2017**

**Registration No: 333-215221**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**AMENDMENT NO. 1 TO  
FORM S-4  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**BRT REALTY TRUST\***  
(Exact Name of Registrant as Specified in Its Charter)

**Massachusetts\***

(State or Other Jurisdiction of  
Incorporation or Organization)

**6798**

Primary Standard Industrial  
Classification

**13-2755856**

(IRS Employer Identification Number)

**60 CUTTER MILL ROAD, SUITE 303  
GREAT NECK, NEW YORK 11021**

(Address, Including Zip Code, and Telephone Number, Including Area Code,  
of Registrant's Principal Executive Officers)

**S. Asher Gaffney, Esq.**

**Secretary**

**60 Cutter Mill Road  
Great Neck, New York 11021  
516-466-3100**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code,  
of Agent for Service)

**Carmen Fonda, Esq.**

**Venable LLP**

**750 E. Pratt Street  
Baltimore, MD 21202  
410-244-7400**

Approximate date of commencement of proposed sale of the securities to the public: As soon as practicable after this registration statement is declared effective.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

Edgar Filing: BRT REALTY TRUST - Form S-4/A

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering.

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  Smaller reporting company   
 (Do not check if a smaller reporting company)

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be registered <sup>(1)</sup>	Proposed maximum offering price per share	Proposed maximum aggregate offering price <sup>(2)</sup>	Amount of registration fee <sup>(2)</sup>
Common stock, par value \$0.01 per share	14,495,135	\$ 8.34	\$ 120,889,426	\$ 14,012

(1) Represents the estimated maximum number of shares of common stock, par value \$0.01 per share, of BRT Apartments Corp. ( New BRT ) that may be issuable pursuant to the conversion (the Conversion ) described in the proxy statement/prospectus that forms a part of this registration statement, which is the number of shares of beneficial interest, par value \$3.00 per share, of BRT Realty Trust (the Old Shares ) outstanding at the close of business on January 12, 2017 (including up to 450,000 Old Shares issuable upon satisfaction of performance and time based vesting conditions related to outstanding restricted share units). Pursuant to the Conversion, each outstanding Old Share will be converted into one share of New BRT common stock. Of this sum, \$13,700 was paid on or about December 20, 2016.

(2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rule 457(f)(1) under the Securities Act and is based upon the average of the high and low price of the Old Shares as reported on the New York Stock Exchange on January 6, 2017.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.**

\* Immediately after the effective date of the conversion described herein, the registrant's name will be BRT Apartments Corp. and its jurisdiction of incorporation will be Maryland.

TABLE OF CONTENTS

**The information in this proxy statement/prospectus is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. BRT Realty Trust may not sell the securities offered by this proxy statement/prospectus until the registration statement filed with the Securities and Exchange Commission is effective. This proxy statement/prospectus is not an offer to sell these securities and BRT Realty Trust is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.**

**PRELIMINARY – SUBJECT TO COMPLETION, DATED JANUARY 12, 2017**

**A PROPOSED CONVERSION—YOUR VOTE IS VERY IMPORTANT**

Dear BRT Realty Trust Shareholder:

We are pleased to invite you to attend an annual meeting (the Annual Meeting ) of shareholders of BRT Realty Trust, a Massachusetts business trust ( Old BRT ), which will be held at our offices, 60 Cutter Mill Road, Suite 303, Great Neck, NY 11021, on March 14, 2017, at 9:00 AM, Eastern Time. We have called this meeting to present eleven proposals to Old BRT shareholders: seven proposals (including six sub-proposals) to be presented in connection with our decision to convert from a Massachusetts business trust to a Maryland corporation and four proposals related to matters customarily addressed at an annual meeting of shareholders, including proposals with respect to the election of trustees, management compensation and the selection of auditors.

*Proposals Pertaining to Converting from a Massachusetts Business Trust to a Maryland Corporation.*

After careful consideration, we have decided that it is in our and our shareholders best interests to convert our jurisdiction and form of organization from a Massachusetts business trust to a Maryland corporation. In furtherance thereof, on December 8, 2016, Old BRT s board of trustees unanimously approved and declared to be advisable (i) an amendment (the Amendment ) to Old BRT s Third Amended and Restated Declaration of Trust (the Trust Declaration ), which Amendment clarifies that Old BRT may convert its form and jurisdiction of organization and (ii) the conversion (the Conversion ) of Old BRT to a Maryland corporation named BRT Apartments Corp. ( New BRT ) in accordance with and pursuant to the terms of a plan of conversion dated December 8, 2016 (the Conversion Plan ).

At the Annual Meeting, you will be asked to consider and vote on (i) a proposal to approve and adopt the Amendment, which we refer to as the Amendment Proposal, and (ii) six sub-proposals relating to the Conversion which we refer to collectively as the Omnibus Conversion Proposal: the first sub-proposal, which we refer to as the Conversion Proposal, seeks your approval of the Conversion and the remaining five sub-proposals, which we refer to as the New BRT Organizational Documents Proposals, seek your approval of certain features of New BRT s organizational documents that will be in effect following the Conversion. We intend for the Conversion and the related transactions to qualify as a tax-free reorganization for Old BRT s U.S. shareholders under the Internal Revenue Code of 1986, as amended (the Code ).

The purpose of the Amendment is to clarify that Old BRT s Trust Declaration authorizes Old BRT to change its form and jurisdiction of organization by means of a conversion approved by Old BRT s shareholders. As noted, the purpose of the Conversion is to change the jurisdiction of organization of Old BRT from Massachusetts to Maryland and to change the legal form of Old BRT from a Massachusetts business trust to a corporation. Our board of trustees determined that the Conversion, including the changes to be implemented by the Conversion, is in the best interests of our shareholders because (i) the change would make us more comparable to our peers inasmuch as approximately 80% of the public companies that qualify as real estate investment trusts ( REITs ) under the Code are currently

organized under Maryland law and no other exchange-listed REIT is organized as a Massachusetts business trust, (ii) in comparison to Massachusetts, Maryland has a comprehensive regulatory system governing, and courts with extensive expertise in addressing issues pertinent to, corporations operating as REITs, (iii) Maryland corporations have perpetual existence while a Massachusetts business trust has a limited life and (iv) shareholders and trustees of a Massachusetts business trust may have personal liability for the obligations of the trust while shareholders and directors of a Maryland corporation generally do not have personal liability for the obligations of the corporation. As a result of these considerations, our board of trustees has concluded that the Conversion is advisable and in the best interests of Old BRT and our shareholders.

(continued)

## TABLE OF CONTENTS

As mentioned above, the Omnibus Conversion Proposal includes the Conversion Proposal and the five sub-proposals regarding New BRT's organizational documents. These five sub-proposals ask you to approve provisions in New BRT's articles of incorporation (the New BRT Charter) and bylaws (the New BRT Bylaws) to be in effect immediately following the Conversion (i) restricting the ownership and transfer of New BRT stock, intended, among other purposes, to assist New BRT to qualify as a REIT, including provisions prohibiting persons or entities, with specified exceptions, from owning more than 6.0% in value or number of shares (whichever is more restrictive) of New BRT common stock or more than 6.0% in value of the aggregate outstanding shares of all classes and series of New BRT stock; (ii) providing that directors may be removed only for cause and only by the vote of at least two-thirds of all votes entitled to be cast generally in the election of directors; (iii) providing for the election of directors of New BRT in uncontested elections by a majority of the votes cast; (iv) providing that action required or permitted to be taken at a shareholders' meeting may be taken without a meeting if unanimous consent to such action is given by all shareholders entitled to vote on such matter; and (v) providing that the threshold required for New BRT shareholders to call a special meeting of shareholders is a majority of all votes entitled to be cast at such meeting. Each of the six sub-proposals included in the Omnibus Conversion Proposal will be voted on separately by Old BRT shareholders.

At the effective time of the Conversion, each outstanding share of beneficial interest in Old BRT (each, an Old Share and collectively, the Old Shares) will be converted into one share of common stock of New BRT (New BRT common stock). As a result, immediately following the Conversion, you will own the same number of shares of New BRT common stock, and the same percentage of the outstanding shares of New BRT common stock, that you owned of Old Shares immediately prior to the Conversion. We expect the shares of New BRT common stock to trade on the New York Stock Exchange under Old BRT's current trading symbol, BRT. On December 13, 2016, the last trading day before the announcement of the Conversion Plan, the closing price per Old Share was \$7.95.

Approval and adoption of the Amendment Proposal and each of the six sub-proposals included in the Omnibus Conversion Proposal requires the affirmative vote of the holders of a majority of the Old Shares outstanding as of the close of business on January 17, 2017 (the Record Date).

### *Proposals Pertaining to Election of Trustees, Management Compensation, Frequency of Votes on Management Compensation and Ratification of the Selection Auditors*

At the Annual Meeting, you will also be asked to consider and vote on a proposal to (i) elect three Class III Trustees (*i.e.*, Fredric H. Gould, Gary Hurand and Elie Weiss) to serve as trustees of Old BRT (and in the event the Conversion is completed, as Class III directors of New BRT) until the 2020 annual meeting and until their respective successors are duly elected and qualify, which we refer to as the Trustee Election Proposal, (ii) approve by non-binding vote, executive compensation, which we refer to as the Say-on-Pay Proposal, (iii) recommend, by non-binding vote, the frequency of future non-binding votes on executive compensation, which we refer to as the Say-on-Frequency Proposal, and (iv) ratify the appointment of BDO USA, LLP as our independent registered public accounting firm for the fiscal year ending September 30, 2017, which we refer to as the Auditor Ratification Proposal. The Trustee Election Proposal, Say-on-Pay Proposal, Say-on-Frequency Proposal and Auditor Ratification Proposal are referred to collectively as the Annual Meeting Proposals.

Approval of the Trustee Election Proposal (*i.e.*, the election of the individuals nominated to serve as Trustees (each, a Nominee and collectively, the Nominees)), requires the affirmative vote of the holders of a majority of the Old Shares outstanding as of the Record Date in favor of the applicable Nominee. The Say-on-Pay Proposal and Auditor Ratification Proposal will be deemed to have been approved if these proposals are approved by a majority of the Old Shares voting at the Annual Meeting. With respect to the Say-on-Frequency Proposal, we will deem the Old BRT shareholders to have recommended the number of years (*i.e.*, one year, two years or three years) receiving the most affirmative votes at the Annual Meeting.

*Recommendation of the Board of Trustees*

Our board of trustees has carefully considered each of these proposals, believes that each is advisable and in the best interests of Old BRT and our shareholders and unanimously recommends that you vote **FOR** the Amendment Proposal, **FOR** each of the sub-proposals included in the Omnibus Conversion Proposal (*i.e.* **FOR** the Conversion Proposal and each of the five New BRT Organizational Documents Proposals), **FOR** the election of each Nominee, **FOR** each of the other Annual Meeting Proposals and **FOR** three years with respect to the Say-on-Frequency Proposal.

(continued)

TABLE OF CONTENTS

Your vote is very important. Whether or not you plan to attend the Annual Meeting, please vote as soon as possible. You may authorize a proxy to vote your shares via the Internet, by telephone, or by completing, signing, dating and mailing the enclosed proxy card in the enclosed postage pre-paid envelope. Specific instructions for shareholders of record who wish to use Internet or telephone voting procedures are included in the enclosed proxy statement/prospectus. You may revoke your proxy in the manner discussed in the accompanying proxy statement/prospectus at any time before it has been exercised at the Annual Meeting.

This proxy statement/prospectus provides detailed information about the foregoing proposals and the Annual Meeting. The proxy statement/prospectus also is a prospectus insofar as the Omnibus Conversion Proposal represents the offering of shares of New BRT common stock to Old BRT shareholders in the Conversion. **We encourage you to read carefully this entire proxy statement/prospectus, including all its annexes, and we especially encourage you to read the section entitled *Risk Factors* beginning on page 16 of this proxy statement/prospectus and page F-11 of our Annual Report on Form 10-K for the fiscal year ended September 30, 2016, attached to and included in this proxy statement/prospectus as Annex F.**

Sincerely,

Israel Rosenzweig  
*Chairman of the Board*

Jeffrey A. Gould  
*Chief Executive Officer and President*

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved the securities to be issued under this proxy statement/prospectus or passed upon the adequacy or accuracy of this proxy statement/prospectus. Any representation to the contrary is a criminal offense.**

*This proxy statement/prospectus is dated January 17, 2017 and is being first mailed to shareholders on or about January 20, 2017.*

TABLE OF CONTENTS

**BRT Realty Trust  
Notice of Annual Meeting of Shareholders  
To Be Held March 14, 2017**

NOTICE IS HEREBY GIVEN that the annual meeting (the Annual Meeting ) of the shareholders of BRT Realty Trust, a Massachusetts business trust ( Old BRT ), will be held at the offices of Old BRT, 60 Cutter Mill Road, Suite 303, Great Neck, NY 11021, on March 14, 2017, at 9:00 AM, Eastern Time, for the purpose of considering and acting upon:

1. A proposal to approve and adopt an amendment (the Amendment ) to Old BRT's Third Amended and Restated Declaration of Trust (the Trust Declaration ), which Amendment clarifies that Old BRT may convert its form and jurisdiction of organization, provided that such conversion is approved by the affirmative vote of not less than a majority of Old BRT's shares of beneficial interest then outstanding and entitled to vote. The Amendment is included in the accompanying proxy statement/prospectus as Annex A.
2. Proposals to approve, in each case, as more fully described in the accompanying proxy statement/prospectus:
  - A. The conversion of Old BRT from a business trust organized under the laws of the Commonwealth of Massachusetts to a corporation named BRT Apartments Corp. ( New BRT ) incorporated under the laws of the state of Maryland (the Conversion ), in accordance with and pursuant to the terms of the Plan of Conversion dated December 8, 2016 (the Conversion Plan ). The Conversion Plan is included in the accompanying proxy statement/prospectus as Annex B.
    - B. Provisions of the articles of incorporation of New BRT to be in effect immediately following the Conversion (the New BRT Charter ) restricting the ownership and transfer of New BRT's capital stock, intended, among other purposes, to assist New BRT to qualify as a real estate investment trust under the Internal Revenue Code of 1986, as amended, including provisions prohibiting persons or entities, with specified exceptions, from owning more than 6.0% in value or number of shares (whichever is more restrictive) of the outstanding shares of New BRT's common stock or more than 6.0% in value of the aggregate outstanding shares of all classes and series of New BRT's stock.
    - C. A provision of the New BRT Charter providing that directors may be removed only for cause and only by the vote of at least two-thirds of all votes entitled to be cast generally in the election of directors.
    - D. A provision of the bylaws of New BRT to be in effect immediately following the Conversion (the New BRT Bylaws ) providing for the election of New BRT directors in uncontested elections by a majority of the votes cast.
    - E. A provision of the New BRT Bylaws providing that action required or permitted to be taken at a shareholders' meeting may be taken without a meeting if unanimous consent to such action is given by all shareholders entitled to vote on such matter.
    - F. A provision of the New BRT Bylaws providing that the threshold required for New BRT shareholders to call a special meeting of shareholders is a majority of all votes entitled to be cast at such meeting.
3. The election of three Class III Trustees, each to serve until the 2020 Annual Meeting of Shareholders and until his or her successor is duly elected and qualifies;
4. A proposal to approve, by non-binding vote, executive compensation of Old BRT for the fiscal year ended September 30, 2016, as more fully described in the accompanying proxy statement/prospectus;
5. A proposal to approve, by non-binding vote, the frequency of future non-binding votes on executive compensation;
6. A proposal to ratify the appointment of BDO USA, LLP as our independent registered public accounting firm for the fiscal year ending September 30, 2017; and



TABLE OF CONTENTS

7. Any other business as may properly come before the meeting or any postponement or adjournment thereof. Proposal 1 is referred to as the Amendment Proposal, Proposals 2.A through 2.F are referred to collectively as the Omnibus Conversion Proposal, Proposal 2.A is referred to as the Conversion Proposal, Proposal 2.B is referred to as the New BRT REIT Restrictions Proposals, Proposal 2.C is referred to as the New BRT Director Removal Proposal and Proposals 2.D, 2.E and 2.F are referred to collectively as the New BRT Bylaws Proposals. The Amendment Proposal, the Conversion Proposal and the New BRT REIT Restrictions Proposal must be approved by the Old BRT shareholders for the Conversion and for any of the six sub-proposals included in the Omnibus Conversion Proposal to be implemented. If any one or more of the New BRT Director Removal Proposal and the New BRT Bylaws Proposals are not approved, but the Amendment Proposal, the Conversion Proposal and the New BRT REIT Restrictions Proposal are approved, the Conversion will be approved and may be implemented, but the New BRT Charter and/or New BRT Bylaws will have alternative provisions, as described under the heading Proposals Regarding New BRT s Organizational Documents in the accompanying proxy statement/prospectus. The New BRT Charter, including the alternative language to be included if the Amendment Proposal, the Conversion Proposal and the New BRT REIT Restrictions Proposal are approved but the New BRT Director Removal Proposal is not approved, is included in the accompanying proxy statement/prospectus as Annex C. The New BRT Bylaws are included in the accompanying proxy statement/prospectus as Annex D.

**On December 8, 2016, our board of trustees unanimously approved the Amendment and the Conversion, and declared each of the foregoing to be advisable and in the best interests of Old BRT and its shareholders. Our board of trustees unanimously recommends that shareholders vote FOR each of the Amendment Proposal, the Conversion Proposal, each of the New BRT Organizational Documents Proposals, FOR the election of each Nominee, FOR each of the other Annual Meeting Proposals, and FOR Three Years with respect to Say-on-Frequency Proposal. We expressly reserve the right to cancel or defer the implementation of the Conversion even if our shareholders vote to approve and adopt the Conversion Proposal, if our board of trustees determines that the Conversion is no longer advisable and in the best interests of Old BRT and its shareholders. Shareholders of record at the close of business on January 17, 2017 will be entitled to notice of and to vote by proxy or in person at the Annual Meeting or any adjournment or postponement thereof.**

BY THE ORDER OF THE BOARD OF TRUSTEES

S. Asher Gaffney  
Secretary  
BRT Realty Trust  
60 Cutter Mill Road, Suite 303  
Great Neck, NY 11021  
Telephone Number: (516) 466-3100  
investorrelations@brtrealty.com

January 17, 2017

**IMPORTANT: It is important that your shares be represented at the meeting. Whether or not you intend to be present, please mark, date and sign the appropriate enclosed proxy or proxies and send them by return mail in the enclosed envelope, which does not require postage if mailed in the U.S.**

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting to Be Held on March 14, 2017**

**This proxy statement/prospectus and the proxy card are available at:  
[www.brtrealty.com/annualmeetingmaterials.pdf](http://www.brtrealty.com/annualmeetingmaterials.pdf).**



TABLE OF CONTENTS

**ADDITIONAL INFORMATION**

BRT Realty Trust ( Old BRT ) files annual, quarterly, current and special reports, proxy statements and other information with the Securities and Exchange Commission (the SEC ). You may read and copy any document we file (or BRT Apartments Corp. ( New BRT ) files) with the SEC at the SEC s Public Reference Room at 100 F Street N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the Public Reference Room. Our filings are also available to the public without charge from the SEC s Internet site at <http://www.sec.gov> or from our Internet site at <http://www.brtherealty.com>. Our Corporate Governance Guidelines, our Code of Legal and Ethical Conduct and our board committee charters are also available on our Internet site at <http://www.brtherealty.com> or in print upon written request addressed to Corporate Secretary, BRT Realty Trust, 60 Cutter Mill Road, Suite 303, Great Neck, NY, 11021. The information in, or that can be accessed through, our Internet site is not a part of this proxy statement/prospectus, and all references herein to Internet sites are inactive textual references only.

This proxy statement/prospectus constitutes a proxy statement of Old BRT with respect to the solicitation of proxies by Old BRT for the Annual Meeting described within. This proxy statement/prospectus also constitutes a prospectus, which is part of the registration statement on Form S-4 filed by Old BRT with respect to the shares of common stock of New BRT to be issued upon consummation of the Conversion if the Conversion Plan is adopted and the Conversion is completed.

Old BRT s Annual Report on Form 10-K for the year ended September 30, 2016 is annexed to, and included in, this proxy statement/prospectus as Annex E (the 10-K ). The 10-K contains important information about Old BRT and its financial condition.

Following the Conversion described in this proxy statement/prospectus, New BRT will become subject to the same informational requirements as Old BRT is prior to the Conversion, and will file annual, quarterly and current reports, proxy statements and other information with the SEC in accordance with the Exchange Act and with the New York Stock Exchange ( NYSE ) pursuant to the Exchange Act and NYSE Listing Rules.

You may request a copy of any document we (or New BRT) file with the SEC, at no cost, by telephoning or writing to us at the following phone number, postal address or e-mail address:

BRT Realty Trust  
60 Cutter Mill Road, Suite 303  
Great Neck, NY 11021  
Telephone Number: (516) 466-3100  
[investorrelations@brtherealty.com](mailto:investorrelations@brtherealty.com)  
Att: S. Asher Gaffney

You also may obtain any document we (or New BRT) file with the SEC by requesting them in writing or by telephone from our proxy solicitor at the following address and telephone number:

D.F. King & Co., Inc.  
48 Wall Street  
New York, New York 10005  
Holders Call Toll Free: (866) 796-6867

**To receive timely delivery of requested documents in advance of the Annual Meeting, please make your request no later than March 7, 2017 (five business days before the date of the Annual Meeting).**

Edgar Filing: BRT REALTY TRUST - Form S-4/A

You should only rely on the information contained in this proxy statement/prospectus to vote on the proposals being presented at the Annual Meeting. No one has been authorized to provide you with different or additional information. We are not making an offer to exchange or sell (or soliciting any offer to buy) any securities, or soliciting any proxy, in any state or other jurisdiction where it is unlawful to do so.

This proxy statement/prospectus is dated January 17, 2017. You should not assume that the information contained in this proxy statement/prospectus is accurate as of any other date, and you should not consider any information in this proxy statement/prospectus to be investment, legal or tax advice. Neither the mailing of this proxy statement/prospectus to shareholders nor the issuance of shares of New BRT common stock pursuant to the Conversion implies that information is accurate as of any other date.

iii

TABLE OF CONTENTS

The terms we, us and our as used in this proxy statement/prospectus means Old BRT and, if the Conversion is completed, from and after the completion of the Conversion, New BRT.

Our fiscal year begins on October 1st and ends on September 30th. Unless otherwise indicated or the context otherwise requires, all references to a year (*e.g.* 2016), refer to the applicable fiscal year ended September 30th.

iv

TABLE OF CONTENTS

**TABLE OF CONTENTS**

<u>QUESTIONS AND ANSWERS ABOUT THIS PROXY STATEMENT/PROSPECTUS AND THE ANNUAL MEETING</u>	1
<u>QUESTIONS AND ANSWERS ABOUT THE CONVERSION</u>	7
<u>SUMMARY</u>	10
<u>SELECTED FINANCIAL DATA</u>	14
<u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	15
<u>RISK FACTORS</u>	16
<u>VOTING AND PROXIES</u>	21
<u>THE AMENDMENT PROPOSAL</u>	25
<u>THE CONVERSION PROPOSAL</u>	25
<u>DESCRIPTION OF NEW BRT STOCK</u>	28
<u>CERTAIN PROVISIONS OF MARYLAND LAW AND OF THE NEW BRT CHARTER AND NEW BRT BYLAWS</u>	34
<u>COMPARISON OF RIGHTS OF SHAREHOLDERS OF OLD BRT AND NEW BRT</u>	40
<u>CERTAIN TAKEOVER DEFENSE PROVISIONS OF MARYLAND LAW AND THE NEW BRT CHARTER AND THE NEW BRT BYLAWS</u>	52
<u>LIMITATION OF LIABILITY AND INDEMNIFICATION OF DIRECTORS AND OFFICERS</u>	57
<u>MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS</u>	59
<u>PROPOSALS REGARDING NEW BRT'S ORGANIZATIONAL DOCUMENTS</u>	76
<u>GOVERNANCE OF OUR COMPANY</u>	77
<u>INFORMATION REGARDING BENEFICIAL OWNERSHIP OF PRINCIPAL SHAREHOLDERS, TRUSTEES AND MANAGEMENT</u>	84
<u>ELECTION OF TRUSTEES</u>	86
<u>ADVISORY APPROVAL OF THE COMPENSATION OF EXECUTIVES</u>	90
<u>ADVISORY VOTE ON THE FREQUENCY AT WHICH WE WILL SEEK SHAREHOLDER ADVISORY VOTES ON EXECUTIVE COMPENSATION</u>	91
<u>INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	92
<u>REPORT OF THE AUDIT COMMITTEE</u>	93
<u>EXECUTIVE COMPENSATION</u>	95
<u>COMPENSATION COMMITTEE REPORT</u>	107
<u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS</u>	108
<u>SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u>	110
<u>INVESTMENT OBJECTIVES AND POLICIES</u>	111
<u>LEGAL MATTERS</u>	116
<u>EXPERTS</u>	116
<u>SHAREHOLDER PROPOSALS</u>	116
<u>OTHER MATTERS</u>	117

ANNEX A – AMENDMENT TO OLD BRT’S THIRD AMENDED AND RESTATED  
DECLARATION OF TRUST

A-1

ANNEX B – CONVERSION PLAN

B-1

ANNEX C – FORM OF NEW BRT CHARTER

C-1

ANNEX D – FORM OF NEW BRT BYLAWS

D-1

ANNEX E – FORM OF ARTICLES OF CONVERSION

E-1

ANNEX F – OLD BRT’S ANNUAL REPORT ON FORM 10-K

F-Cover

TABLE OF CONTENTS

**QUESTIONS AND ANSWERS ABOUT THIS PROXY STATEMENT/PROSPECTUS AND THE ANNUAL MEETING**

*Unless otherwise specifically stated or the context otherwise requires, all references in this proxy statement/prospectus to the Company, we, our and us refer to BRT Realty Trust, a Massachusetts business trust ( Old BRT ), and its subsidiaries, with respect to the period before the Conversion (as defined below), and BRT Apartments Corp., a Maryland corporation ( New BRT ), and its subsidiaries, with respect to the period after the Conversion.*

**Q. Why am I receiving this proxy statement/prospectus?**

- A. We are sending you this document because we are seeking your approval of the Conversion (as described in the next paragraph) and the other matters to be considered at the annual meeting of shareholders. This document is a proxy statement because it is being used to solicit proxies to approve the Conversion and the other matters to be considered at the Annual Meeting. It is also a prospectus because, if the Conversion is completed, we will be issuing shares of New BRT common stock, par value \$0.01 per share (the New BRT common stock), in exchange for the outstanding shares of beneficial interest of Old BRT, par value \$3.00 per share (the Old Shares).

**Q. What is the purpose of the Conversion?**

- A. The purpose of the conversion (the Conversion) is to change the jurisdiction of organization of Old BRT from Massachusetts to Maryland and to change the legal form of Old BRT from a Massachusetts business trust to a corporation. Our board of trustees determined that these changes are in the best interests of our shareholders because (i) the change would make us more comparable to our peers inasmuch as approximately 80% of the public companies that qualify as real estate investment trusts (REITs) under the Internal Revenue Code of 1986, as amended (the Code), are currently organized under Maryland law and no other exchange listed REIT is organized as a Massachusetts business trust, (ii) in comparison to Massachusetts, Maryland has a comprehensive regulatory system governing, and courts with extensive expertise in addressing issues pertinent to, corporations operating as REITs, (iii) Maryland corporations have perpetual existence while a Massachusetts business trust has a limited life and (iv) shareholders and trustees of a Massachusetts business trust may have personal liability for the obligations of the trust while shareholders and directors of a Maryland corporation generally do not have personal liability for the obligations of the corporation. As a result of these considerations, our board of trustees has concluded that the Conversion is advisable and in the best interests of Old BRT and our shareholders.

**Q. Where and when is the Annual Meeting?**

- A. The annual meeting (the Annual Meeting) of the shareholders of Old BRT will be held at the offices of Old BRT, 60 Cutter Mill Road, Suite 303, Great Neck, NY 11021, on March 14, 2017, at 9:00 AM, Eastern Time.

**Q. Who can vote at the Annual Meeting?**

- A. Only holders of record of Old Shares at the close of business on January 17, 2017 (the Record Date) or their duly authorized proxies will be entitled to vote at the Annual Meeting. If you are not a shareholder of record but hold Old Shares through your broker, bank, trust or other nominee, you may vote your shares in person only if you obtain a legal proxy from the broker, bank, trust or other nominee that holds your shares authorizing you to vote the shares. We will begin mailing this proxy statement/prospectus on or about January 20, 2017 to shareholders of record at the close of business on the Record Date.

**Q. What will I be voting on at the Annual Meeting?**

- A. At the Annual Meeting, Old BRT shareholders will consider and vote upon the following proposals:
- Proposal 1:** A proposal to approve and adopt an amendment (the Amendment) to Old BRT's Third Amended and Restated Declaration of Trust (the Trust Declaration), which Amendment clarifies that Old BRT may
    - convert its form and jurisdiction of organization, provided that such conversion is approved by the affirmative vote of not less than a majority of Old Shares then outstanding and entitled to vote. The Amendment is annexed hereto as Annex A.



TABLE OF CONTENTS

- **Proposal 2:** Proposals to approve:
  - A. The conversion of Old BRT from a business trust organized under the laws of the Commonwealth of Massachusetts to a corporation named BRT Apartments Corp. ( New BRT ) incorporated under the laws of the state of Maryland, in accordance with and pursuant to the terms of the Plan of Conversion dated December 8, 2016 (the Conversion Plan ). The Conversion Plan is included as Annex B annexed hereto. Provisions of the articles of incorporation of New BRT to be in effect immediately following the Conversion (the New BRT Charter ) restricting the ownership and transfer of New BRT’s capital stock, intended, among other purposes, to assist New BRT in qualifying as a REIT, including provisions
  - B. prohibiting persons or entities, with specified exceptions, from owning more than 6.0% in value or number of shares (whichever is more restrictive) of the outstanding shares of New BRT’s common stock or more than 6.0% in value of the aggregate outstanding shares of all classes and series of New BRT’s capital stock which we refer to collectively as New BRT stock.
  - C. A provision of the New BRT Charter providing that directors may be removed only for cause and only by the vote of at least two-thirds of all votes generally entitled to be cast in the election of directors;
  - D. A provision of the New BRT Bylaws providing for the election of New BRT directors in uncontested elections by a majority of the votes cast;
  - E. A provision of the New BRT Bylaws providing that action required or permitted to be taken at a shareholders meeting may be taken without a meeting if unanimous consent to such action is given by all shareholders entitled to vote on such matter; and
  - F. A provision of the New BRT Bylaws providing that the threshold required for New BRT shareholders to call a special meeting of shareholders is a majority of all votes entitled to be cast at such meeting.
- **Proposal 3:** A proposal to elect three Class III trustees (*i.e.*, Fredric H. Gould, Gary Hurand and Elie Weiss (each, referred to as a Nominee, and collectively referred to as the Nominees)) to hold office until the 2020 annual meeting and until their respective successors are duly elected and qualify;
- **Proposal 4:** A proposal to approve, by non-binding vote, executive compensation of Old BRT for the fiscal year ended September 30, 2016;
- **Proposal 5:** A proposal to approve, by non-binding vote, the frequency of future non-binding votes on executive compensation;
- **Proposal 6:** A proposal to ratify the appointment of our independent registered public accounting firm, BDO USA, LLP, for the fiscal year ending September 30, 2017.

We refer to these proposals as follows:

- Proposal 1 is referred to as the Amendment Proposal;
- Proposals 2.A through 2.F are referred to collectively as the Omnibus Conversion Proposal;
- Proposal 2.A is referred to as the Conversion Proposal;
- Proposal 2.B is referred to as the New BRT REIT Restrictions Proposal;
- Proposals 1, 2.A and 2.B are referred to collectively as the Required Conditions Proposals;
- Proposal 2.C is referred to as the New BRT Director Removal Proposal;
- Proposal 2.D is referred to as the Majority Voting in Election of Directors Proposal;
- Proposal 2.E is referred to as the Shareholder Consent in Lieu of Meeting Proposal;
- Proposal 2.F is referred to as the Special Shareholder Meeting Proposal;
- Proposals 2.D, 2.E and 2.F are referred to collectively as the New BRT Bylaws Proposals;

TABLE OF CONTENTS

- Proposals 2.B through 2.F are referred to collectively as the New BRT Organizational Documents Proposals;
- Proposal 3 is referred to as the Trustee Election Proposal;
- Proposal 4 is referred to as the Say-on-Pay Proposal;
- Proposal 5 is referred to as Say-on-Frequency Proposal;
- Proposal 6 is referred to as the Auditor Ratification Proposal;
- Proposals 3, 4 and 6 are referred to collectively as the Annual Meeting Proposals; and
- Proposals 1 through 6 are referred to collectively as the Proposals.

**Q. What are the board of trustees voting recommendations?**

A. Our board of trustees recommends that you vote **FOR** each of the proposals, specifically:

- **FOR** the Amendment Proposal;
- **FOR** the Conversion Proposal;
- **FOR** each of the New BRT Organizational Documents Proposals;
- **FOR** the election of each of the three Nominees;
- **FOR** the Say-on-Pay Proposal;
- **FOR** **THREE YEARS** with respect to the Say-on-Frequency Proposal; and
- **FOR** the Auditor Ratification Proposal.

**Q. Can I vote **FOR** the Amendment Proposal and **AGAINST** the Conversion Proposal or any or all of the proposals regarding New BRT's organizational documents?**

Yes. Note, however, that each of the Required Conditions Proposals (*i.e.*, the Amendment Proposal, the Conversion Proposal and the New BRT REIT Restrictions Proposal) must be approved by the Old BRT shareholders for the Conversion and for any of the sub-proposals included in the Omnibus Conversion Proposal to be implemented. If any one or more of the New BRT Director Removal Proposal and the New BRT Bylaws Proposals are not approved, but each of the Required Conditions Proposals are approved, the Conversion will be approved and may be implemented, but the New BRT Charter and/or New BRT Bylaws will have alternative provisions, as described below under the heading Proposals Regarding the New BRT Organizational Documents. The New BRT Charter, including the alternative language to be included if the Required Conditions Proposals are approved but the New BRT Director Removal Proposal is not approved, is included in this proxy statement/prospectus as Annex C. The New BRT Bylaws are included in this proxy statement/prospectus as Annex D.

**Q. How do I vote?**

- A. If you are a shareholder of record at the close of business on the Record Date, you may vote in person at the Annual Meeting or authorize a proxy to vote your shares, in which case you may:
- *Submit a proxy by Mail:* sign, date and mail in your proxy card using the accompanying envelope;
  - *Submit a proxy by Telephone:* submit a proxy by calling 1-800-776-9437; or
  - *Submit a proxy via the Internet:* connect to the Internet site [www.proxyvote.com](http://www.proxyvote.com) and follow the directions provided.

Detailed instructions for using the telephone and Internet options for voting by proxy are set forth on the proxy card accompanying this proxy statement/prospectus. Because the Internet and telephone services authenticate shareholders by use of a control number, you must have the proxy card available in order to use these services to vote. Proxies submitted by telephone or Internet must be received by 11:59 p.m., Eastern Time on March 13, 2017. If you choose to vote by telephone or Internet, you do not need to return the proxy card.

## TABLE OF CONTENTS

If you choose to vote by proxy, the proxy holders will vote your Old Shares based on your directions. If you submit your proxy card but do not properly direct how your Old Shares should be voted, the proxy holders will vote **FOR** the Amendment Proposal, **FOR** the Conversion Proposal, **FOR** each of the New BRT Organizational Documents Proposals, **FOR** the election of each of the Nominees, **FOR** each of the other Annual Meeting Proposals and **FOR** three years with respect to the Say-on-Frequency Proposal and as the proxy holders may determine, in their discretion, with respect to any other matters that may properly come before the meeting. The Board is not currently aware of any business to be acted upon at the meeting other than that which is described in this proxy statement/prospectus. The proxy holders will use their discretion on any other proposals and matters that may be brought before the Annual Meeting.

If your Old Shares are held by a broker, bank, trust or other nominee, then you are not the shareholder of record. In that case, to vote in person at the Annual Meeting, you must obtain a legal proxy from your broker, bank, trust or other nominee and present it at the Annual Meeting. If your Old Shares are held in the name of a broker, bank, trust or other nominee, you should receive separate instructions from such nominee describing how to provide voting instructions.

### **Q. Why is my vote important?**

- If you do not submit a proxy or vote in person at the Annual Meeting, it will be more difficult for us to obtain the necessary quorum to hold the Annual Meeting. In addition, your failure to submit a proxy or to vote in person will
- A. have the same effect as a vote **AGAINST** the Amendment Proposal, **AGAINST** each of the proposals included in the Omnibus Conversion Proposal and **AGAINST** the proposal regarding the election of each of the Nominees to serve as trustee.

### **Q. What constitutes a quorum for the Annual Meeting?**

- In order to carry out the business of the Annual Meeting, shareholders constituting a quorum must be present. For this purpose, a quorum is the presence, either in person or by proxy, of holders of a majority of the issued and outstanding Old Shares eligible to vote as of the Record Date. Broker non-votes and abstentions will be counted
- A. for purposes of determining whether a quorum is present. Failure of a quorum to be present at the Annual Meeting will necessitate an adjournment or postponement of the Annual Meeting and will subject us to additional expense.

### **Q. What votes are required to adopt the proposals relating to the Conversion?**

- The vote required to approve the Amendment Proposal and each of the six sub-proposals included in the Omnibus
- A. Conversion Proposal is the affirmative vote of the holders of a majority of the outstanding Old Shares. Abstentions and broker non-votes will have the effect of a vote against each of these proposals.

### **Q. What votes are required to approve the Annual Meeting Proposals?**

- The election of a Nominee requires the affirmative vote of the holders of a majority of the outstanding Old Shares
- A. in favor of such nominee. Abstentions and broker non-votes with respect to a Nominee will have the effect of a vote against such nominee.

The approval of the Say-on-Pay Proposal and the Auditor Ratification Proposal requires a majority of the votes cast at the Annual Meeting on such proposal. Abstentions will have the effect of a vote against such proposals and broker non-votes will have no effect with respect to such proposals.

With respect to the Say-on-Frequency Proposal, we will deem the selection (*i.e.*, one year, two years and three years) receiving the most votes cast at the Annual Meeting as the recommendation made by the shareholders with respect to the frequency of future Say-on-Pay proposals. Abstentions and broker non-votes will have no effect with respect to this proposal.

Shareholders will be entitled to cast one vote for each Old Share held as of the Record Date on each proposal. As of the close of business on the Record Date, there were 14,045,135 Old Shares outstanding and entitled to vote at the Annual Meeting.



TABLE OF CONTENTS

**Q. If my shares are held in street name by my broker, bank, trust or other nominee, will my broker, bank, trust or other nominee vote my shares for me?**

Not in most circumstances. In the absence of your voting instructions, your broker, bank, trust or other nominee may only vote your shares at its discretion on routine matters and your nominee may not vote your shares on proposals that are not routine. We believe that the Auditor Ratification Proposal is a routine matter on which

- A. nominees can vote on behalf of their clients if clients do not furnish voting instructions. All of the other Proposals are non-routine matters so your nominee is not entitled to vote your shares on these Proposals without your instructions.

If your Old Shares are held in street name by your broker, bank, trust or other nominee, you should follow the directions provided by your broker, bank, trust or other nominee.

**Q. What do I need to do now?**

You should carefully read and consider this proxy statement/prospectus, including its annexes. It includes important information about the Proposals, including what our board of trustees considered in approving and declaring advisable the Amendment Proposal and the Omnibus Conversion Proposal as well as the risks associated with such proposals.

- A. You should then authorize a proxy to vote your shares by one of the three methods described under **Q. How do I Vote** as soon as possible so that your Old Shares will be represented at the Annual Meeting.

If your Old Shares are held by you through a broker, bank, trust or other nominee, you should receive a separate voting instruction form with this proxy statement/prospectus.

**Q. Can I change my vote after I have mailed my signed proxy card or otherwise granted my proxy (i.e., by telephone or by Internet)?**

- A. Yes. If you are a record holder of Old Shares and you validly authorize a proxy, you may revoke your proxy in any of the following five ways:

- Revoke your proxy at the Internet site [www.proxyvote.com](http://www.proxyvote.com) by 11:59 p.m. on March 13, 2017;
- Revoke your proxy by calling 1-800-776-9437 by 11:59 p.m. on March 13, 2017;
- Deliver a written notice of revocation to our Secretary before the proxy has been exercised;
- Prior to the exercise of the proxy, submit a duly authorized proxy bearing a later date by mail, telephone or internet in accordance with the procedures set forth above; or
- Vote in person at the Annual Meeting (but your attendance at the Annual Meeting, in and of itself, will not revoke the proxy).

If your Old Shares are held through a broker, bank, trust or other nominee, you should contact your broker, bank, trust or other nominee to change your vote.

**Q. Who will conduct the proxy solicitation and how much will it cost?**

We have engaged D.F. King & Co., Inc. ( D.F. King ) to assist in the solicitation of proxies from brokers, nominees, institutions and individuals. We will pay D.F. King a fee of \$7,500, plus reasonable expenses, for these services. We have also agreed to indemnify D.F. King against certain losses, costs and expenses. In addition, our trustees, officers and employees may request the return of proxies by telephone or in person, but no additional compensation will be paid to them.

D.F. King & Co., Inc.

48 Wall Street

New York, New York 10005

Shareholders Call Toll Free: (866) 796-6867

TABLE OF CONTENTS

**Q. Where can I find the voting results of the Annual Meeting?**

- A. We plan to announce preliminary voting results at the Annual Meeting and publish final results on a Form 8-K filed with the Securities and Exchange Commission (the SEC) promptly after the Annual Meeting.

**Q. Whom should I call with questions?**

- A. You should call D.F. King, our proxy solicitor, toll-free at (866) 796-6867 with any questions about the proposals to be presented to the shareholders or to obtain additional copies of this proxy statement/prospectus or additional proxy cards.

**Q. What is householding?**

Shareholders who share the same address and last name may receive only one copy of the proxy materials unless we, in the case of shareholders of record, or such shareholder's broker, bank or nominee, in the case of shareholders whose shares are held in street name, receive contrary instructions. This practice, known as householding, is designed to reduce printing and mailing costs. Shareholders desiring to discontinue householding and receive a separate copy of the proxy materials, may (1) if their shares are held in street name, notify their broker, bank or nominee or (2) if they are shareholders of record, direct a written request to: BRT Realty Trust, 60 Cutter Mill Road, Suite 303, Great Neck, NY 11021, Attn: Secretary.

TABLE OF CONTENTS

**QUESTIONS AND ANSWERS ABOUT THE CONVERSION**

*What follows are questions that you, as a shareholder of Old BRT, may have regarding the Conversion. Additional important information is contained in the annexes to this proxy statement/prospectus.*

**Q. What is the Amendment Proposal?**

This is a proposal to approve and adopt the Amendment to Old BRT's Trust Declaration, which Amendment clarifies that Old BRT may convert its form and jurisdiction of organization, provided that the conversion is approved by the affirmative vote of not less than a majority of Old BRT's shares then outstanding and entitled to vote. The Amendment is included in this proxy statement/prospectus as Annex A. If the Amendment Proposal is not approved, the Conversion will not be implemented.

**Q. What is the Conversion Proposal?**

This is the proposal to approve the conversion of Old BRT from a business trust organized under the laws of Massachusetts to a corporation organized in Maryland in accordance with and pursuant to the Conversion Plan. The Conversion Plan is included in this proxy statement/prospectus as Annex B. If the Conversion Proposal is not approved, the Conversion will not be implemented.

**Q. What are the New BRT Organizational Documents Proposals?**

These are five separate proposals that relate to the organizational documents that will govern New BRT and its shareholders following the Conversion. Specifically, we are asking you to approve provisions of the: (i) New BRT Charter restricting the ownership and transfer of New BRT stock, intended, among other purposes, to assist New BRT to qualify as a REIT, including provisions prohibiting persons or entities, with specified exceptions, from owning more than 6.0%, in value or number of shares (whichever is more restrictive), of the outstanding shares of New BRT common stock or more than 6.0% in value of the aggregate outstanding shares of all classes and series of New BRT stock; (ii) New BRT Charter providing that directors may be removed only for cause and only by the vote of at least two-thirds of all votes entitled to be cast generally in the election of directors; (iii) New BRT Bylaws providing for the election of New BRT's directors in uncontested elections by a majority of the votes cast in the election of such director; (iv) New BRT Bylaws providing that action required or permitted to be taken at a shareholders meeting may be taken without a meeting if unanimous consent to such action is given by all shareholders entitled to vote on such matter; and (v) New BRT Bylaws providing that the threshold for New BRT shareholders to call a special meeting of shareholders is a majority of all votes entitled to be cast.

**Q. Will there be a change in the business and control of Old BRT as a result of the Conversion?**

The business of New BRT will be the same as the business of Old BRT and the Conversion will not result in any change in headquarters, business, jobs, management, location of any of the offices, number of employees, assets, liabilities or net worth (other than as a result of the costs incident to the conversion). The Conversion is not expected to result in a change in Old BRT current trading status on the New York Stock Exchange, which is referred to as the NYSE, and the shares of New BRT common stock will trade on the NYSE under the ticker symbol BRT upon the effective time of the Conversion. Old BRT's management, including all trustees and officers, will remain the same in connection with the Conversion and will assume identical positions with New BRT, except that each trustee of Old BRT will become a director of New BRT. The Conversion will effect certain changes of a legal nature, the most significant of which are described in the section entitled *Comparison of Rights of Shareholders of Old BRT and New BRT*.

**Q. How will being a shareholder of New BRT differ from being a shareholder of Old BRT?**

Following the Conversion, your rights, and the limitations thereon, as a shareholder of New BRT will be governed by the New BRT Charter, the New BRT Bylaws and Maryland law, which we believe are similar, but not identical, to the rights and limitations thereon of Old Shares under Old BRT. See *Comparison of Rights of Shareholders of Old BRT and New BRT*.

Some of the principal differences between the rights of shareholders of Old BRT and New BRT relate to the scope of restrictions on ownership and/or transfer of New BRT stock, the vote required to elect trustees/directors, the number of shareholders required to call of special meeting of shareholders, the circumstances and vote required to remove

directors, the ability to fill vacancies in the board of trustees/directors, certain provisions of Maryland law which may limit the ability of certain persons to

7



TABLE OF CONTENTS

acquire control of New BRT, the duration of the entity and the potential exposure of trustees/directors and/or shareholders to liability for the obligations of the entity in which they are trustees/directors and/or shareholders.

**Q. What are the material U.S. federal income tax consequences of the Conversion?**

- A. The Conversion is intended to qualify as a tax-free reorganization under U.S. federal income tax laws. As a result of the Conversion, for U.S. federal income tax purposes:
- you will not be required to recognize any gain or loss on the conversion of your Old Shares to shares of New BRT common stock;
  - your tax-basis in your New BRT common stock will be the same as your basis in the Old Shares that have been converted into such New BRT common stock; and
  - your holding period for your New BRT common stock will include your holding period for the Old Shares that have been converted into such New BRT common stock, provided such shares of New BRT common stock were held by you as a capital asset at the time of conversion.

The tax consequences to any particular shareholder of holding Old Shares or New Shares will depend on that shareholder's particular tax circumstances. We urge you to consult with your tax advisor, regarding the specific tax consequences, including the federal, state and local tax consequences and foreign tax consequences, to you in light of your particular investment in, or the tax circumstances of acquiring, holding, exchanging, selling or otherwise disposing of, Old Shares or shares of New BRT common stock.

For more information, see *Material U.S. Federal Income Tax Considerations* .

**Q. Do any of Old BRT's trustees or executive officers have any interests in the Conversion different from, or in addition to, mine?**

- No, except as noted below. Our trustees and executive officers and their affiliates have equity interests in Old BRT through the ownership of Old Shares and, to that extent, their interest in the Conversion is the same as that of the other holders of Old Shares. The Conversion will not cause any vesting or acceleration of benefits (including with respect to Old Shares outstanding that are subject to forfeiture in the event vesting conditions based on the passage of time and a continued relationship with Old BRT (or its successor) are not satisfied (the Restricted Old Shares ) and 450,000 Old Shares issuable upon satisfaction of vesting conditions based on the passage of time, a continued relationship with Old BRT (or its successor) and satisfaction of performance metrics related to outstanding restricted share units (the Old RSUs )). However, pursuant to the New BRT Charter, New BRT's board of directors have adopted resolutions providing that Gould Investors L.P., Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould, shareholders of Old BRT beneficially owning, as calculated pursuant to Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act ), approximately 25% of Old Shares as of January 17, 2017, will not be subject to the provisions of the New BRT Charter prohibiting persons or entities from owning more than 6.0%, in value or number of shares (whichever is more restrictive) of the outstanding shares of New BRT common stock or more than 6.0% in value of the New BRT stock.
- A.

**Q. When is the Conversion expected to occur?**

- A. If the Old BRT shareholders approve the Required Conditions Proposals at the Annual Meeting, we expect to complete the Conversion promptly following the Annual Meeting.

Please note, however, that if our board of trustees determines that the Conversion and/or any of the other related transactions are no longer advisable and in the best interest of Old BRT and our shareholders, we reserve the right to cancel or defer the timing of the Conversion, even if Old BRT shareholders vote to approve the Conversion. See *The Conversion Proposal—Conditions to Completion of the Conversion; Termination of the Plan*.

**Q. Will New BRT common stock have a different CUSIP number than Old Shares following the proposed Conversion?**

- A. No. The CUSIP number for the New BRT common stock will be the same as the number for the Old Shares.



TABLE OF CONTENTS

**Q. Have any shareholders already agreed to approve any of the Proposals?**

No. There are no agreements between us and any of our shareholders in which a shareholder has agreed to vote in favor of any of the Proposals to be submitted for shareholder approval at the Annual Meeting. We expect, however, that each of Gould Investors L.P. and each of our trustees and executive officers will vote the Old

- A. Shares, he, she or it beneficially owns in favor of each of the Proposals, including the Amendment Proposal, each of the Omnibus Conversion Proposals, each of the Annual Meeting Proposals and in favor of three years with respect to the Say-on-Frequency Proposal. As of January 17, 2017, such persons beneficially owned in the aggregate approximately 43.6% of the outstanding Old Shares.

**Q. Am I entitled to dissenters' (or appraisal) rights as a holder of Old Shares?**

- A. No. Under Massachusetts law and the Trust Declaration, you are not entitled to any dissenters' rights of appraisal in connection with the Conversion.

**Q. Will the shares of New BRT common stock be publicly traded?**

Yes. We plan to undertake the necessary applications such that shares of New BRT common stock will trade on the NYSE under Old BRT's current symbol BRT, following the Conversion. We do not anticipate completing the Conversion unless and until the shares of New BRT common stock have been approved for NYSE listing.

## TABLE OF CONTENTS

### **SUMMARY**

*This summary highlights selected information from this proxy statement/prospectus and may not contain all of the information that is important to you. This summary is qualified in its entirety by, and should be read together with, the other parts of this proxy statement/prospectus and the other documents to which this proxy statement/prospectus refers to fully understand the amendment proposal, the conversion proposal, and each of the proposals regarding New BRT's organizational documents. In particular, you should read the annexes attached to this proxy statement/prospectus, including the Amendment, which is attached as Annex A, the Conversion Plan, which is attached as Annex B. You should also read New BRT's articles of incorporation expected to be in effect at the time of the Conversion, attached as Annex C, which we refer to herein as the New BRT Charter, and the form of bylaws of New BRT, attached as Annex D, which we refer to herein as the New BRT Bylaws, because these documents, together with Maryland law, will govern your rights as a New BRT shareholder following the Conversion (assuming the proposals regarding New BRT's organizational documents are approved). For a discussion of the risk factors that you should carefully consider, see the section entitled *Risk Factors* beginning on page 16 of this proxy statement/prospectus and page F-11 of our 10-K, attached to and included in this proxy statement/prospectus as Annex F.*

### **The Company**

*BRT Realty Trust  
60 Cutter Mill Road, Suite 303  
Great Neck, NY 11021  
(516) 466-3100*

Old BRT was organized as a business trust under the laws of the Commonwealth of Massachusetts in 1972 under the name Berg Enterprises Realty Group and changed its name to BRT Realty Trust in 1975. Old BRT is currently publicly traded on the NYSE under the symbol BRT . Old BRT owns, operates and develops multi-family properties and owns and operates commercial and mixed-use real estate assets. Old BRT conducts its operations to qualify as a REIT for federal income tax purposes. As of January 12, 2017, Old BRT owns 32 multi-family properties located in 11 states with an aggregate of 9,066 units, including a development project at which the construction of a 339 unit multi-family property is contemplated.

Old BRT's headquarters are located at 60 Cutter Mill Road, Suite 303, Great Neck, NY 11021 and the telephone number at this location is (516) 466-3100. Information about us is available on our Internet site at [www.brtrealty.com](http://www.brtrealty.com). The contents of our Internet site are not incorporated by reference herein and are not deemed to be part of this proxy statement/prospectus. See the 10-K attached to and included as part of this proxy statement/prospectus as Annex F for further information about Old BRT.

### **The Conversion**

The Conversion Plan provides that, subject to the receipt of necessary shareholder approval, Old BRT will convert from a business trust organized under the laws of Massachusetts to a corporation named BRT Apartments Corp. incorporated under the laws of the State of Maryland. The approval of the shareholders of Old BRT of the Required Conditions Proposals is required to implement the Conversion.

Upon the effectiveness of the Conversion, each Old Share will be converted into one share of New BRT common stock.

### **Reasons for the Conversion**

Our board of trustees has determined that the Conversion is in the best interests of our shareholders because (i) the change would make us more comparable to our peers inasmuch as approximately 80% of the public companies that qualify as REITs are currently organized under Maryland law and no other exchange listed REIT is organized as a Massachusetts business trust, (ii) in comparison to Massachusetts, Maryland has a comprehensive regulatory system governing, and courts with extensive expertise in addressing issues pertinent to, corporations operating as REITs, (iii) Maryland corporations have perpetual existence while a Massachusetts business trust has a limited life and (iv) shareholders and trustees of a Massachusetts business trust may have personal liability for the obligations of the trust while shareholders and directors of a Maryland corporation generally do not have personal liability for the obligations of the corporation. As a result of these considerations, our board of trustees has concluded that the Conversion is advisable and in the best interest of Old BRT and our shareholders.

## TABLE OF CONTENTS

### **Conditions to Completion of the Conversion; Termination of the Conversion Plan**

The completion of the Conversion is subject to the approval by the affirmative vote of a majority of the outstanding Old Shares at the Annual Meeting of the Required Conditions Proposals.

However, even if the Required Conditions Proposals are approved by the requisite vote of the shareholders of Old BRT, the board of trustees may terminate (or defer the implementation of) the Conversion if it determines that the Conversion is no longer advisable and in the best interests of the Old BRT shareholders. The board of trustees may deem the Conversion to be inadvisable if, among other things, the listing of the shares of New BRT common stock on the NYSE is not approved, or if tax counsel is unable to render a legal opinion that the Conversion (i) will qualify as a tax-free reorganization and (ii) will not adversely impact New BRT's ability to use Old BRT's operating loss carry forwards. In the event of such termination, the Conversion Plan will become void and Old BRT will not have any liability to any other person or entity with respect to such termination (other than the expenses incurred in seeking to implement same).

The Conversion will take effect at a time to be determined by or at the direction of the board of trustees and set forth in the articles of conversion, which we refer to as the Articles of Conversion. The Articles of Conversion, the form of which are annexed as Annex E, will be filed with the State Department of Assessments and Taxation of Maryland (the SDAT ) and will specify the date and time at which the Conversion will become effective. We refer to such date and time as the Effective Time.

### **Regulatory Approvals**

We are not aware of any regulatory requirements that must be complied with or regulatory approvals that must be obtained prior to completion of the Conversion, other than compliance with applicable federal and state securities laws.

### **Treatment of Old Shares in the Conversion**

In connection with the Conversion, each Old Share will be converted into one share of New BRT common stock. Shares of New BRT common stock will not be evidenced by certificates and will be registered in book entry form.

### **Treatment of Old BRT's Compensation Plans and Outstanding Equity Awards in the Conversion**

At the Effective Time, New BRT will be deemed to have assumed Old BRT's equity incentive related plans and applicable award agreements, which include the Old BRT Amended and Restated 2016 Incentive Plan, Old BRT's 2012 Incentive Plan and Old BRT's 2009 Incentive Plan, as amended, which we refer to collectively as the Plans. As of the Effective Time, all outstanding restricted Old Shares and all rights of participants to acquire Old Shares under the Plans, including pursuant to restricted share units issued by Old BRT, will automatically convert into an equal number of restricted shares of New BRT common stock or rights to acquire an equal number of shares of New BRT common stock, on the same terms and conditions that were in effect prior to the Conversion.

### **Comparative Rights of Shareholders of Old BRT and New BRT**

Your rights as a holder of Old Shares are governed by Massachusetts law and Old BRT's organizational documents. If the Conversion is completed, you will become a holder of shares of New BRT common stock and your rights as a shareholder will be governed by Maryland law and New BRT's organizational documents. **Some important differences exist between your rights as a holder of Old Shares and your rights as a holder of shares of New BRT common stock.** See *Comparison of Rights of Shareholders of Old BRT and New BRT*.

**Material U.S. Federal Income Tax Considerations**

The Conversion is intended to qualify as a tax-free reorganization under U.S. federal income tax laws. We expect that U.S. shareholders of Old BRT will not recognize any gain or loss for U.S. federal income tax purposes upon the exchange of their shares of Old BRT for shares of New BRT common stock. However, the tax consequences to you will depend on your own situation. You are urged to consult your own tax advisors concerning the specific tax consequences of the Conversion to you, including any state, local or foreign tax consequences of the Conversion. See *Material U.S. Federal Income Tax Considerations*.

## TABLE OF CONTENTS

### **Accounting Treatment**

The Conversion will have no effect for accounting purposes.

### **Risk Factors**

Before voting on any of the proposals described in the Notice of Annual Meeting, you should carefully consider all of the information contained in of this proxy statement/prospectus, as well as the specific factors under the heading *Risk Factors* beginning on page 16 of this proxy statement/prospectus and page F-11 of the 10-K, attached to and included in this proxy statement/prospectus as Annex F.

### **Recommendation of the Board of Trustees**

Old BRT's trustees believes that each Proposal is advisable and in the best interest of Old BRT and its shareholders and unanimously recommends that you vote **FOR** each of the Amendment Proposal, the Omnibus Conversion Proposals, the election of each Nominee, the other Annual Meeting Proposals and, with respect to the Say-on-Frequency Proposal, **FOR** three years.

### **Date, Time, Place and Purpose of Annual Meeting**

The Annual Meeting will be held on March 14, 2017, at 9:00 AM, New York City time, at the offices of Old BRT located at 60 Cutter Mill Road, Suite 303, Great Neck, NY 11021 to consider and vote upon the Proposals.

### **Shareholders Entitled to Vote**

Old BRT's board of trustees has fixed the close of business on January 17, 2017 as the record date for the determination of shareholders entitled to receive notice of, and to vote at, the Annual Meeting. As of the close of business on January 17, 2017, there were 14,045,135 Old Shares outstanding and entitled to vote and \_\_\_\_\_ holders of record.

### **Vote Required**

The vote required to approve the Amendment Proposal and each of the six sub-proposals included in the Omnibus Conversion Proposal is the affirmative vote of the holders of a majority of the outstanding Old Shares. Abstentions and broker non-votes will have the effect of a vote against each of these proposals.

The vote required to elect a Nominee is the affirmative vote in favor of such nominee by the holders of a majority of the outstanding Old Shares. Abstentions and broker non-votes with respect to a Nominee will have the effect of a vote against such Nominee.

The vote required to approve the Say-on-Pay Proposal and the Auditor Ratification Proposal is a majority of the votes cast at the Annual Meeting. Abstentions will have the effect of a vote against such proposals and broker non-votes will have no effect with respect to such proposals.

With respect to the Say-on-Frequency Proposal, we will deem the selection (*i.e.*, one year, two years and three years) receiving the most votes cast at the Annual Meeting as the recommendation made by the Old BRT shareholders with respect to the Frequency of Say-on-Pay votes. Abstentions and broker non-votes will have no effect with respect to this proposal.



Holders will be entitled to cast one vote for each Old Share held as of the Record Date on each Proposal. As of the close of business on the Record Date, there were 14,045,135 Old Shares outstanding and entitled to vote at the Annual Meeting.

**No Dissenters (or Appraisal) Rights**

Under Massachusetts law and the Trust Declaration, you are not entitled to dissenters' rights of appraisal as a result of the Conversion.

**Old Shares Owned by Old BRT's Trustees and Executive Officers**

At the close of business on the Record Date, our trustees and executive officers and their affiliates were entitled to vote an aggregate of 6,081,156 Old Shares. This represents approximately 43.6% of the issued and outstanding Old Shares as of the Record Date. Approval of the Conversion requires the affirmative vote of a majority of the outstanding Old Shares with respect to each of the Required Conditions Proposals.

TABLE OF CONTENTS**Board of Directors and Executive Officers of New BRT Following the Conversion**

Immediately following the Conversion, New BRT's board of directors will consist of the same individuals who comprise the Old BRT board of trustees immediately prior to the Conversion and these individuals will serve as directors for the balance of the term for which such person was elected as a trustee of Old BRT. The individuals serving as principal executive officer, principal financial officer and principal accounting officer of Old BRT immediately prior to the Conversion will hold the same positions at New BRT immediately following the Conversion.

**Historical Market Price of Old Shares**

The Old Shares are listed on the NYSE under the symbol BRT. The following table presents the reported high and low sale prices of Old Shares on the NYSE for the periods presented and as reported on the consolidated transaction reporting system. On December 13, 2016, the most recent trading day before the announcement of the adoption by Old BRT's board of trustees of the Conversion Plan, the closing price per Old Share was \$7.95. You should obtain a current stock price quotation for Old Shares.

<b>Fiscal Quarters</b>	<b>Fiscal 2017<sup>(1)</sup></b>		<b>Fiscal 2016</b>		<b>Fiscal 2015</b>	
	<b>High</b>	<b>Low</b>	<b>High</b>	<b>Low</b>	<b>High</b>	<b>Low</b>
First Quarter	\$ 8.25	\$ 7.57	\$ 7.48	\$ 6.02	\$ 7.50	\$ 6.91
Second Quarter	8.55	8.00	7.15	5.41	7.35	6.71
Third Quarter	—	—	7.28	6.93	7.30	6.74
Fourth Quarter	—	—	8.25	7.01	7.19	6.76

(1) Through January 11, 2017.

Following the Conversion, shares of New BRT common stock will be listed and traded on the NYSE in the same manner as Old Shares currently are listed and traded on the NYSE. The historical trading prices of Old Shares are not necessarily indicative of the future trading prices of shares of New BRT common stock.

TABLE OF CONTENTS**SELECTED FINANCIAL DATA**

The following table sets forth selected historical financial data for each of the years indicated. This table should be read in conjunction with the detailed information and financial statements appearing in Annex F attached to, and included in, this proxy statement/prospectus.

<b>(Dollars in thousands, except per share amounts)</b>	<b>2016</b>	<b>2015</b>	<b>2014</b>	<b>2013</b>	<b>2012</b>
<i>Operating statement data:</i>					
Total revenues <sup>(1)</sup>	\$ 94,264	\$ 77,095	\$ 61,813	\$ 28,984	\$ 8,099
Total expenses <sup>(2)</sup>	104,101	87,376	74,030	38,330	12,330
Gain on sale of real estate	46,477	15,005	—	—	—
Income (loss) from continuing operations	32,479	4,724	(12,217 )	(3,335 )	(3,626 )
Income (loss) from discontinued operations	12,679	(6,329 )	(3,949 )	5,424	5,176
Net (loss) income attributable to common shareholders	31,289	(2,388 )	(9,454 )	5,013	4,430
<i>Earnings (loss) per beneficial share:</i>					
Income (loss) from continuing operations	\$ 1.21	\$ (0.02 )	\$ (0.81 )	\$ (0.21 )	\$ (0.23 )
Income (loss) from discontinued operations	1.02	(0.15 )	0.15	0.56	0.55
Basic and diluted (loss) earnings per share	\$ 2.23	\$ (0.17 )	\$ (0.66 )	\$ 0.35	\$ 0.32
<i>Balance sheet data:</i>					
Total assets <sup>(3)</sup>	\$ 874,899	\$ 820,869	\$ 734,620	\$ 549,491	\$ 385,956
Real estate properties, net <sup>(3)</sup>	759,576	591,727	522,591	310,541	128,509
Cash and cash equivalents	27,399	15,556	22,639	55,782	75,314
Restricted cash-construction holdback/multi-family	7,383	6,518	9,555	3,090	—
Assets related to discontinued operations <sup>(4)</sup>	—	173,228	134,188	142,607	148,036
Mortgages payable, net of deferred fees <sup>(5)</sup>	588,457	451,159	382,690	230,570	90,361
Junior subordinated notes	36,998	36,978	36,958	36,938	36,918
Total BRT Realty Trust shareholders' equity	151,290	122,655	138,791	138,791	133,449

(1) The increases from 2012 through 2016 are due primarily to the operations of our multi-family properties.

(2) The increases from 2012 through 2016 are due primarily to increased expenses (*i.e.*, operating expense, interest expense and depreciation and amortization) related to the operations of our multi-family properties.

(3) The increases from 2012 through 2016 are due to our multi-family property acquisitions.

(4) Primarily reflects the assets of the Newark Joint Venture.

(5)

Approximately \$154.6 million of the increase from 2013 to 2014 and approximately \$141.9 million of the increase from 2012 to 2013 is due to the mortgage debt incurred in the multi-family property acquisitions.

TABLE OF CONTENTS

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This proxy statement/prospectus, including the documents attached as annexes hereto, contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 (the "PSLRA"). Examples of forward-looking statements include statements, beliefs and expectations regarding the benefits of the proposed Conversion, and statements regarding our business, financial condition, results of operations, business strategies, prospects, plans and objectives of management, market for our stock and other matters that are based on management's expectations as of the filing date of this proxy statement/prospectus.

Statements contained in this proxy statement/prospectus that are not historical facts are hereby identified as forward-looking statements for the purpose of the safe harbor provided by Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 27A of the Securities Act of 1933, as amended (the "Securities Act"). Such statements reflect management's current views with respect to financial results related to future events and are not guarantees of future performance. These forward-looking statements are based on assumptions and expectations that may not be realized and are inherently subject to numerous risks and uncertainties, many of which are beyond our ability to control, predict with accuracy and even anticipate; readers are cautioned not to put undue reliance on those forward-looking statements. Future events and actual results, financial or otherwise, may differ materially from the results discussed in the forward-looking statements. Furthermore, there is no assurance that any positive trends suggested or referred to in such statements will continue. When we use words such as "may," "will," "would," "could," "likely," "should," "anticipate," "intend," "seek," "plan," "continue," "believe," "estimate," "expect" or those words or similar expressions, we identify forward-looking statements. These forward-looking statements include plans, projections and estimates and are found at various places throughout this proxy statement/prospectus.

Important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are set forth in our filings with the SEC. These risks and uncertainties include: the inability to complete the Conversion in a timely manner; the inability to complete the Conversion due to the failure of shareholders to adopt the Required Conditions Proposals; the failure of the Conversion to close for any other reason; the possibility that the anticipated benefits of the Conversion will not be realized, or will not be realized within the expected time period; the possibility that the Conversion may be more expensive to complete than anticipated, including as a result of unexpected factors or events; diversion of management's attention from ongoing business operations and opportunities; the impact of current lending and capital market conditions on our liquidity; our ability to finance or refinance projects or repay our debt; the impact of economic conditions on the ownership, development and management of our real estate portfolio; general real estate investment and development risks; vacancies in our properties; risks associated with acquiring, developing and owning properties in partnership with others; competition; illiquidity of real estate investments; our substantial debt and the ability to obtain and service debt; the level and volatility of interest rates; effects of uninsured or underinsured losses; environmental liabilities; conflicts of interest; downturns in the housing market; the ability to maintain effective internal controls; compliance with governmental regulations; our ability to continue to qualify as a REIT; changes in federal, state or local tax laws; volatility in the market price of our publicly traded stock; inflation risks; litigation risks; cybersecurity risks and cyber incidents; and our ability to achieve our strategic goals.

Any forward-looking statement we make in this proxy statement/prospectus or elsewhere speaks only as of the date on which we make it. New risks and uncertainties arise from time to time, and it is impossible for us to predict these events or how they may affect us. These and other important factors, including those set forth under the caption "Risk Factors" beginning on page 16 of this proxy statement/prospectus and on page F-11 of our 10-K attached to and included in this proxy statement/prospectus as Annex F may cause actual results to differ materially from those indicated by our forward-looking statements. We have no duty to, and do not intend to, update or revise the forward-looking statements we make in this proxy statement/prospectus, whether as a result of new information, future events or otherwise, except as may be required by law. In light of these risks and uncertainties, you should keep

in mind that the future events or circumstances described in any forward-looking statement we make in this proxy statement/prospectus or elsewhere might not occur. You are advised to consult the *Risk Factors* section of this proxy statement/prospectus and the 10-K, in which we provide cautionary discussion of risks, uncertainties and assumptions relevant to our business. These are factors that, individually or in the aggregate, management believes could cause our actual results to differ materially from expected and historical results. We note these factors for investors as permitted by the PSLRA. You should understand that it is not possible to predict or identify all such factors. Consequently, you should not consider such disclosures to be a complete discussion of all potential risks or uncertainties.

## TABLE OF CONTENTS

### **RISK FACTORS**

*In addition to the other information in this proxy statement/prospectus and in the annexes to this proxy statement/prospectus, you should carefully consider the following risk factors in determining whether or not to vote in favor of the proposals to be voted upon at the Annual Meeting. In addition, you should carefully consider the risk factors contained in the 10-K, attached to and included in this proxy statement/prospectus as Annex E. This section includes or refers to certain forward-looking statements. The risks and uncertainties described herein may not be the only ones we face. Additional risks and uncertainties not presently known to us or that we currently believe to be immaterial may also adversely affect our business. See the section entitled Special Note Regarding Forward-Looking Statements beginning on page 15.*

### **RISKS RELATED TO THE CONVERSION**

*If the Conversion is consummated, the benefits expected to be obtained from the Conversion may not be achieved.*

Assuming that each of the Required Conditions Proposals are approved at the Annual Meeting, we expect the Conversion will take place on or about March 15, 2017. Old BRT's board of trustees may, however, defer the timing of the Conversion or may even terminate the Conversion Plan and abandon the Conversion should it determine that the Conversion would not be advisable and in the best interest of Old BRT and its shareholders. In the event of such termination and abandonment, the Conversion Plan will become void and Old BRT will not have any liability with respect to such termination and abandonment, other than the costs (including legal and accounting fees) incurred in connection with preparing for the Conversion.

*We may not be able to obtain the consents or approvals of third parties needed to complete the Conversion on the time table contemplated, or at all, and we may be forced to make payments, provide indemnifications or make other accommodations in order to facilitate our obtaining requisite consents or implement other strategies that may be disadvantageous to us.*

Our ability to undertake the Conversion will depend upon our ability to obtain third party approvals and consents, which include consents and approvals from our mortgage lenders and other third parties. There can be no guarantee that we will be able to obtain these consents, or that, if we do, we will not need to make certain cash payments, provide indemnifications with respect to structural changes and make other accommodations for such third parties to obtain these consents. Any such indemnity or other accommodation may, among other things, adversely affect our operating results. Even if we are able to obtain such consents or approvals, doing so may require a significant amount of management time and attention, which could divert the attention of our management from running our day-to-day business and from accomplishing the other aspects of the Conversion and thus may delay our time table.

### **THE NEW BRT CHARTER AND THE NEW BRT BYLAWS AND MARYLAND LAW MAY HINDER ATTEMPTS TO ACQUIRE NEW BRT**

*Certain provisions of the New BRT Charter and the New BRT Bylaws and Maryland law may inhibit a change in control that shareholders consider favorable and could also limit the market price of New BRT common stock*

Certain provisions of the New BRT Charter and the New BRT Bylaws and Maryland law may impede, or prevent, a third party from acquiring control of New BRT without the approval of New BRT's board of directors. These provisions, several of which are as more fully described at *Description of New BRT Stock*, *Certain Provisions of Maryland Law and the New BRT Charter and New BRT Bylaws* and *Comparison of Rights of Shareholders of Old BRT and New BRT*:

Edgar Filing: BRT REALTY TRUST - Form S-4/A

- provide for a staggered board of directors consisting of three classes, with one class of directors being elected each year and each class being elected for three-year terms and until their successors are duly elected and qualify;
- impose restrictions on ownership and transfer of New BRT stock (such provisions being intended to, among other purposes, facilitate New BRT's compliance with certain Code requirements relating to New BRT's qualification as a REIT under the Code);
- prevent New BRT's shareholders from amending the New BRT Bylaws;



## TABLE OF CONTENTS

- limit who may call special meetings of shareholders;
- establish advance notice and informational requirements and time limitations on any director nomination or proposal that a shareholder wishes to make at a meeting of shareholders;
- provide that directors may be removed only for cause and only by the vote of at least two-thirds of all votes generally entitled to be cast in the election of directors;
- do not permit cumulative voting in the election of New BRT's board of directors, which would otherwise permit holders of less than a majority of outstanding shares to elect one or more directors; and
- authorize New BRT's board of directors to, without shareholder approval, amend the New BRT Charter to increase or decrease the aggregate number of shares of New BRT stock or the number of shares of stock of any class or series that New BRT has authority to issue and classify or reclassify any unissued shares of common or preferred stock and set the preferences, rights and other terms of the classified or reclassified shares.

Certain provisions of the Maryland General Corporation Law (the "MGCL") may impede a third party from making a proposal to acquire us or inhibit a change of control under circumstances that otherwise could be in the best interest of holders of shares of New BRT common stock, including:

- business combination provisions that, subject to certain exceptions and limitations, prohibit certain business combinations between New BRT and an interested shareholder (defined generally as any person who beneficially owns 10% or more of the voting power of New BRT's outstanding voting stock or an affiliate or associate of New BRT who, at any time within the two-year period immediately prior to the date in question, was the beneficial owner of 10% or more of the voting power of New BRT's then outstanding voting stock) or an affiliate thereof for five years after the most recent date on which the shareholder becomes an interested shareholder, and thereafter impose two supermajority shareholder voting requirements on these combinations;
- control share provisions that provide that, subject to certain exceptions, holders of control shares of New BRT (defined as voting shares which, when aggregated with other shares controlled by the shareholder, entitle the holder to exercise voting power in the election of directors within one of three increasing ranges) acquired in a control share acquisition (defined as the direct or indirect acquisition of ownership or control of issued and outstanding control shares, subject to certain exceptions) have no voting rights with respect to the control shares except to the extent approved by New BRT's shareholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares; and
- additionally, Title 3, Subtitle 8 of the MGCL permits New BRT's board of directors, without shareholder approval and regardless of what is currently provided in the New BRT Charter or the New BRT Bylaws, to implement certain corporate governance provisions. See *Certain Takeover Defense Provisions of Maryland Law and the New BRT Charter and the New BRT Bylaws* .

As permitted by the MGCL, it is anticipated that immediately upon consummation of the Conversion, (1) all business combinations between New BRT and any other person, provided that each such business combination is first approved by New BRT's board of directors (including a majority of directors who are not affiliates or associates of such person), will be exempted by resolution from the Maryland Business Combination Act and (2) the New BRT Bylaws attached hereto as *Annex D*, containing a provision opting out of the Maryland Control Share Acquisition Act, will be adopted as the bylaws of New BRT.

## **RISKS RELATING TO OWNERSHIP OF NEW BRT COMMON STOCK**

***Old BRT has not paid cash dividends for more than the past five years and New BRT will not currently be required to pay cash dividends to maintain its qualification as a REIT.***

Old BRT has not paid cash dividends since 2010 and has not been required to pay cash dividends to maintain its status as a REIT under the Code because it has had a significant net operating loss carry-forward since such date. We

anticipate that New BRT will be able to use Old BRT's net operating loss carry-forward. Old BRT estimates that at December 31, 2016, its net operating loss carry-forward is between approximately \$15 million and \$20 million. Since New BRT will be able to offset its future taxable income, if any, against such

TABLE OF CONTENTS

tax loss carry-forward until the earlier of 2029 and the tax loss carry-forward has been fully used, it will not currently be required by the Internal Revenue Code to pay a dividend to maintain its status as a REIT. If New BRT does not begin paying dividends in the near future, any increase in the value of New BRT common stock would come only from a rise in the market price of New BRT common stock, which is uncertain and unpredictable, and there can be no guarantee that New BRT common stock price will rise to provide any such increase.

***Issuance of securities by New BRT with claims that are senior to those of holders of shares of New BRT common stock may limit or prevent New BRT from paying dividends on New BRT common stock or adversely affect the per share trading price of New BRT common stock.***

Shares of New BRT common stock are equity interests. As such, shares of New BRT common stock will rank junior to any indebtedness and other non-equity claims with respect to assets available to satisfy claims on New BRT. New BRT may issue debt securities, which will be entitled to receive New BRT's assets prior to distribution of holders of New BRT common stock, and may expose New BRT to risks associated with leverage, including increased risk of loss. New BRT may also issue preferred equity securities, which will rank senior to shares of New BRT common stock in New BRT's capital structure, and the holders of such preferred equity securities may have separate voting rights and other rights, preferences as to dividends and other distributions and other privileges more favorable than those of holders of New BRT common stock. The issuance of such preferred equity securities could have the effect of delaying, deferring or preventing a transaction or a change of control that might involve a premium price for New BRT shareholders or otherwise be in New BRT's best interest.

Unlike indebtedness, for which principal and interest customarily are payable on specified due dates, dividends are payable on shares of New BRT common stock only when, as and if authorized by New BRT's board of directors and declared by New BRT and depend on, among other things, New BRT's results of operations, financial condition, debt service requirements, other cash needs, restrictions imposed by senior debt or equity securities, the extent of its net operating loss carry forwards, the amount of legally available funds and many other factors New BRT's board of directors may deem relevant or as required by applicable law. New BRT may incur substantial amounts of additional debt and other obligations that will rank senior to shares of New BRT common stock.

***The number of shares of New BRT common stock available for future issuance or sale could adversely affect the per share trading price of New BRT common stock.***

We cannot predict whether future issuances or sales of shares of New BRT common stock or the availability of shares for resale in the open market will decrease the per share trading price of New BRT common stock. The issuance of substantial numbers of shares of New BRT common stock in the public market or the perception that such issuances might occur could adversely affect the per-share trading price of New BRT common stock. The per share trading price of New BRT common stock may decline significantly upon the sale or registration of additional shares of New BRT common stock.

***The market price and trading volume of New BRT common stock may be volatile following the Conversion.***

The market price of New BRT common stock may be volatile and be subject to wide fluctuations. In addition, the trading volume in New BRT common stock may fluctuate and cause significant price variations to occur. Our stock price may fluctuate as a result of factors that are beyond our control or unrelated to our historical financial performance and condition and prospects. If the per share trading price of New BRT common stock declines significantly, you may be unable to resell your shares at or above the price at which you acquired your Old Shares. We cannot assure you that the per share trading price of New BRT common stock will not be volatile or fluctuate or decline significantly in the future. In addition, the stock market in general can experience considerable price and volume fluctuations that may be unrelated to our historical performance and condition and prospects.

Some of the factors that could negatively affect our share price or result in fluctuations in the price or trading volume of New BRT common stock include:

- actual or anticipated variations in our quarterly operating results;
- our ability to pay dividends and the amount and timing of such dividend payments, if any;

TABLE OF CONTENTS

- changes in our funds from operations or earnings estimates;
- publication of research reports about us or the real estate industry;
- the market for similar securities;
- changes in market valuations of similar companies;
- any additional debt we incur in the future;
- additions or departures of key management personnel;
- actions by institutional stockholders;
- speculation in the press or investment community;
- the realization of any of the other risk factors presented in this proxy statement/prospectus;
- the extent of investor interest in our securities;
- the general reputation of REITs and the attractiveness of our equity securities in comparison to other equity securities, including securities issued by other real estate-based companies;
- our underlying asset value;
- investor confidence in the stock and bond markets, generally;
- changes in tax laws;
- failure to meet earnings estimates;
- failure to maintain our REIT status;
- general economic and financial market conditions;
- war, terrorist acts and epidemic disease;
- our issuance of debt or equity securities; and
- our financial condition, results of operations and prospects.

***There may be a limited trading market for New BRT common stock, which may cause such shares to trade at a discount to the underlying value of our business and make it difficult for you to sell your New BRT common stock.***

We anticipate that New BRT common stock will trade on the NYSE under the symbol BRT. Listing on the NYSE or another national securities exchange does not ensure an actual or active market for New BRT common stock. For more than the past five years, the Old Shares have had a low trading volume. Accordingly, an actual or active market for New BRT common stock may not be maintained, the market for New BRT common stock may be illiquid, the holders of New BRT common stock may be unable to sell their shares, and the prices that may be obtained in effecting such sales may not reflect the underlying value of our assets and business.

***Ownership of less than 6.0% of the outstanding New BRT shares or less than 6.0% of the aggregate outstanding shares of all classes and series of New BRT's stock could violate the restrictions on ownership and transfer in New BRT's charter, which would result in the transfer of the shares owned or acquired in violation of such restrictions to a trust for the benefit of a charitable beneficiary and loss of the right to receive dividends and other distributions on, and the economic benefit of any appreciation of, such shares, and you may not have sufficient information to determine at any particular time whether an acquisition of New BRT shares will result in the loss of the economic benefit of such shares.***

In order for New BRT to qualify as a real estate investment trust under the Code, no more than 50% of the value of the outstanding shares of New BRT's stock may be owned, directly or indirectly or through application of certain attribution rules, by five or fewer individuals (as defined in the Code) at any time during the last half of a taxable year. To facilitate New BRT's qualification as a REIT under the Code, among other purposes, New BRT's Charter generally prohibits any person from actually or constructively owning more than 6.0%, in value or number of shares, whichever is more restrictive, of the outstanding New BRT shares, or more than 6.0%

TABLE OF CONTENTS

in value of the aggregate outstanding shares of all classes and series of New BRT's stock, which we refer to as the ownership limits, unless New BRT's board of directors exempts the person from such ownership limit. In addition, the New BRT Charter prohibits any person from beneficially or constructively owning shares of New BRT stock that would result in more than 50% of the value of the outstanding shares of New BRT stock to be beneficially owned by five or fewer individuals, regardless of whether such ownership is during the last half of any taxable year, which we refer to as the Five or Fewer Limit. Shares owned or acquired in violation of either of these restrictions will be transferred automatically to a trust for the benefit of a charitable beneficiary selected by New BRT. The person that owned or acquired the New BRT stock in violation of the restrictions in the New BRT Charter will not be entitled to any dividends or distributions paid after the date of the transfer to the trust and, upon a sale of such shares by the trust, will generally be entitled to receive only the lesser of the market value on the date of the event that resulted in the transfer to the trust or the net proceeds of the sale by the trust to a person who could own the shares without violating the ownership limits. For more information about the restrictions on ownership and transfer of New BRT stock and the rights of shareholders whose New BRT stock have been transferred to the charitable trust, see *Description of New BRT Stock – Restrictions on Ownership and Transfer*.

New BRT's board of directors has exempted Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould from the ownership limits and has not established a limitation on ownership for such persons. Based on information supplied to Old BRT, as of January 17, 2017, Gould Investors owns approximately 21.3% of the outstanding Old Shares and, by virtue of the applicable attribution rules under the Code, one individual currently beneficially owns 24.5% of the outstanding Old Shares. If the Conversion had been completed on January 17, 2017, that individual would beneficially own (by virtue of the applicable attribution rules under the Code), 24.5% of the outstanding New BRT stock. As a result, the acquisition by each of four other individuals of 6.0% of the outstanding New BRT stock, when combined with the ownership of New BRT common stock of Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould, generally would not result in a violation of the Five or Fewer Limit.

However, there is no limitation on Gould Investors, Fredric H. Gould, Matthew J. Gould, Jeffrey A. Gould acquiring additional Old Shares or New BRT stock or otherwise increasing their percentage of ownership of Old Shares or New BRT stock, meaning that the amount of New BRT stock that other persons or entities may acquire without violating the Five or Fewer Limit could be reduced in the future and without notice. To the extent that Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould, or their affiliates, acquire additional Old Shares or New BRT stock, or any other event occurs (including a repurchase of Old Shares or New BRT stock), that results in an individual beneficially or constructively owning 26.0% or more of the outstanding shares of New BRT stock within the meaning of the New BRT Charter, the acquisition by four other individuals of 6.0% or less of the outstanding New BRT stock would violate the Five or Fewer Limit and, therefore, could cause the New BRT stock acquired by one or more of these other individuals to be transferred to the charitable trust, despite their compliance with the 6.0% ownership limits. If any of the foregoing occurs, compliance with the 6.0% ownership limit will not ensure that your ownership of New BRT stock does not cause a violation of the Five or Fewer Limit or that your shares of New BRT stock are not transferred to the charitable trust.

Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould will be required by the Exchange Act and regulations promulgated thereunder to report, with certain exceptions, their acquisition of additional New BRT stock within two days of such acquisitions, and all holders of New BRT stock will be required to file reports of their acquisition of beneficial ownership (as defined in the Exchange Act) of more than 5% of the outstanding New BRT stock. However, beneficial ownership for purposes of the of reporting requirements under the Exchange Act is calculated differently than beneficial ownership for purposes of determining compliance with the Five or Fewer Limit. Further, to the extent that any one or more of Gould Investors, Fredric H. Gould, Matthew J. Gould or Jeffrey A. Gould acquires 30% or more of the outstanding New BRT stock, ownership of five percent or less of the outstanding New BRT stock could still result in a violation of the Five or Fewer Limit and, therefore, cause newly-acquired New BRT stock be transferred to the charitable trust. As a result, you may not have enough information currently available

to you at any time to determine the percentage of ownership of New BRT stock that you can acquire without violating the Five or Fewer Limit and losing the economic benefit of the ownership of such newly-acquired shares.

## TABLE OF CONTENTS

### **VOTING AND PROXIES**

This proxy statement/prospectus is furnished in connection with the solicitation of proxies by the Old BRT board of trustees for exercise at the Annual Meeting, or any adjournment or postponement thereof.

#### **Date, Time and Place of the Annual Meeting**

The Annual Meeting will be held at the offices of Old BRT, 60 Cutter Mill Road, Suite 303, Great Neck, NY 11021, on March 14, 2017, at 9:00 AM, Eastern Time.

#### **Purposes of the Annual Meeting**

The purposes of the Annual Meeting are to consider and vote upon the following:

1. A proposal to approve and adopt the Amendment to Old BRT's Trust Declaration, which Amendment clarifies that Old BRT may convert its form and jurisdiction of organization, provided that such conversion is approved by the affirmative vote of not less than a majority of Old Shares outstanding and entitled to vote. The Amendment is included in this proxy statement/prospectus as Annex A.
2. Proposals to approve:
  - A. The conversion of Old BRT from a business trust organized under the laws of the Commonwealth of Massachusetts to a corporation named BRT Apartments Corp. ( New BRT ) incorporated under the laws of the state of Maryland, in accordance with and pursuant to the terms of the Conversion Plan. The Conversion Plan is included in its proxy statement/prospectus as Annex B. Provisions of the New BRT Charter restricting the ownership and transfer of New BRT's capital stock, including provisions prohibiting persons or entities, with specified exceptions, from owning more than
  - B. 6.0% in value or number of shares (whichever is more restrictive) of the outstanding shares of New BRT's common stock or more than 6.0% in value of the aggregate outstanding shares of all classes and series of New BRT's stock.
  - C. A provision of the New BRT Charter providing that directors may be removed only for cause and only by the vote of at least two-thirds of all votes entitled to be cast generally in the election of directors.
  - D. A provision of the New BRT Bylaws providing for the election of New BRT directors in uncontested elections by a majority of the votes cast.
  - E. A provision of the New BRT Bylaws providing that action required or permitted to be taken at a shareholders' meeting may be taken without a meeting if unanimous consent to such action is given by all shareholders entitled to vote on such matter.
  - F. A provision of the New BRT Bylaws providing that the threshold required for New BRT shareholders to call a special meeting of shareholders is a majority of all votes entitled to be cast at such meeting.
3. To elect three Class III trustees, each to serve until the 2020 Annual Meeting of Shareholders and until his or her successor is duly elected and qualifies;
4. A proposal to approve, by non-binding vote, executive compensation of Old BRT for the fiscal year ended September 30, 2016;
5. A proposal to approve, by non-binding vote, the frequency of future non-binding votes on executive compensation;
6. A proposal to ratify the appointment of BDO USA, LLP as our independent registered public accounting firm for the fiscal year ending September 30, 2017; and
7. Any other business as may properly come before the meeting.

#### **Vote Required**



Edgar Filing: BRT REALTY TRUST - Form S-4/A

The vote required to approve the Amendment Proposal and each of the six sub-proposals included in the Omnibus Conversion Proposal and to elect each Nominee is the affirmative vote of the holders of a majority of

21

## TABLE OF CONTENTS

the outstanding Old Shares. Abstentions and broker non-votes will have the effect of a vote against each of these proposals and with respect to a Nominee, will have the effect of a vote against each Nominee.

The vote required to approve each of the Say-on-Pay Proposal and the Auditor Ratification Proposal is a majority of the votes cast at the Annual Meeting on such proposal. Abstentions will count as vote against such proposals and broker non-votes will have no effect with respect to such proposals.

With respect to the Say-on-Frequency Proposal, we will deem the selection (*i.e.*, one year, two years and three years) receiving the most votes cast at the Annual Meeting as the recommendation made by the shareholders. Abstentions and broker non-votes will have no effect with respect to this proposal.

Holders will be entitled to cast one vote for each Old Share held as of the Record Date on each proposal. As of the close of business on the Record Date, there were 14,045,135 Old Shares outstanding and entitled to vote at the Annual Meeting.

Our board of trustees recommends that you vote **FOR** each of the proposals and **FOR** each of the Nominees. The Required Conditions Proposals (*i.e.*, Amendment Proposal, the Conversion Proposal and the New BRT REIT Restrictions Proposal) must each be approved by the Old BRT shareholders for the Conversion and for any of the six sub-proposals included in the Omnibus Conversion Proposal to be implemented. If any one or more of the New BRT Director Removal Proposal and the New BRT Bylaws Proposals are not approved, but the Required Conditions Proposals are approved, the Conversion will be approved and may be implemented, but the New BRT Charter and/or New BRT Bylaws will have alternative provisions, as described below under the heading **Proposals Regarding the New BRT Organizational Documents**. The New BRT Charter, including the alternative language to be included if the Required Conditions Proposals are approved but the New BRT Director Removal Proposal is not approved, is annexed hereto as Annex C. The New BRT Bylaws are annexed hereto as Annex D.

### **Shareholder Record Date for the Annual Meeting**

Our board of trustees has fixed the close of business on January 17, 2017 as the Record Date for determining which Old BRT shareholders are entitled to notice of and to vote by proxy or in person at the Annual Meeting and at any adjournment or postponement thereof. On the Record Date, there were 14,045,135 Old Shares outstanding and entitled to vote at the Annual Meeting.

### **Quorum**

In order to carry out the business of the Annual Meeting, shareholders constituting a quorum must be present. For this purpose, a quorum is the presence, either in person or by proxy, of holders of a majority of the issued and outstanding Old Shares eligible to vote as of the Record Date. For purposes of determining the presence of a quorum, abstentions and broker non-votes, if any, will be included in determining the number of Old Shares present and entitled to vote at the Annual Meeting. Failure of a quorum to be present at the Annual Meeting will necessitate an adjournment or postponement of the Annual Meeting and will subject us to additional expense. At the Annual Meeting, each Old Share is entitled to one vote on each matter properly submitted to our shareholders.

In the event that a quorum is not present, or if proxies for sufficient votes to approve one or more of the Proposals, including the Required Condition Proposals, are not received by the time scheduled for the Annual Meeting, the chairman of the meeting may adjourn the meeting to another date and time without a vote of the Old BRT shareholders present at the Annual Meeting, or the persons named as proxies may move for one or more adjournments of the Annual Meeting to permit further solicitation of proxies with respect to such proposals. In determining whether to adjourn the Annual Meeting, the following factors may be considered: the nature of the proposals that are the

subject of the Annual Meeting, the percentage of the Old Shares represented at the Annual Meeting in person or by proxy, the nature of any further solicitation and the information to be provided to Old BRT shareholders with respect to the reasons for the solicitation. Approval of any motion to adjourn the Annual Meeting brought before Old BRT s shareholders will require the affirmative vote of a majority of the outstanding Old Shares present in person or by proxy at such meeting. If an adjournment is properly brought before the Annual Meeting, the persons named as proxies will vote the Old Shares that they are entitled to vote in their discretion.

## TABLE OF CONTENTS

### **Proxies**

If you are a shareholder of record at the close of business on the Record Date, you may vote in person at the Annual Meeting or by proxy. You have three ways to authorize a proxy to vote your shares:

- *Submitting a proxy by Mail:* sign, date and mail in your proxy card using the accompanying envelope;
- *Submitting a proxy by Telephone:* submit a proxy by calling 1-800-776-9437; or
- *Submitting a proxy via the Internet:* connect to the Internet site at [www.proxyvote.com](http://www.proxyvote.com).

If you are a holder of Old Shares on the Record Date, you may vote by completing, signing and promptly returning the proxy card in the self-addressed stamped envelope provided or authorizing a proxy by telephone or internet. Detailed instructions for using the telephone and Internet options for voting by proxy are set forth on the proxy card accompanying this proxy statement/prospectus. Because the Internet and telephone services authenticate shareholders by use of a control number, you must have the proxy card available in order to use these services to vote. Proxies submitted by telephone or Internet must be received by 11:59 p.m., Eastern Time on March 13, 2017. If you choose to vote by telephone or Internet, you do not need to return the proxy card. All Old Shares represented by properly authorized proxy cards received before or at the Annual Meeting will, unless the proxies are revoked, be voted in accordance with the instructions indicated. If no instructions are indicated on a properly authorized proxy, the Old Shares represented by the proxy will be voted **FOR** each of the Proposals. You are urged to indicate how to vote your shares if you vote by proxy.

If a properly authorized proxy is submitted and the shareholder has abstained from voting on one or more of the proposals, the Old Shares represented by the proxy will be considered present at the Annual Meeting for purposes of determining a quorum, but will not be considered to be a vote cast on the abstained proposals.

Under applicable rules and regulations of the NYSE, brokers, banks, trusts or other nominees have the discretion to vote on routine matters, but do not have the discretion to vote on non-routine matters. Each of the proposals to be considered at the Annual Meeting, other than the Auditor Ratification Proposal, constitutes a non-routine matter within the meaning of applicable NYSE rules and regulations. As a result, if you hold your shares through a broker, bank or other nominee, under the rules of the NYSE, your broker or other nominee may not vote with respect to any of the proposals to be considered at the Annual Meeting other than the Auditor Ratification Proposal unless you have provided voting instructions with respect to that proposal.

A broker non-vote results when a broker, bank or other nominee properly executes and returns a proxy but indicates that the nominee is not voting with respect to a non-routine matter because the nominee lacks discretionary authority to vote the shares and the nominee has not received voting instructions from the beneficial owner. A broker non-vote is not considered a vote cast on a proposal; however, stockholders delivering a properly-executed proxy indicating a broker non-vote will be counted as present for purposes of determining whether a quorum is present.

If you hold your shares in a brokerage account, then:

- With respect to the Amendment Proposal and each of the six sub-proposals included in the Omnibus Conversion Proposal, your broker, bank or other nominee is not entitled to vote your shares if no instructions are received from you. Broker non-votes and abstentions, if any, will have the effect as a vote **AGAINST** these proposals.
- With respect to the Trustee Election Proposal, your broker, bank or other nominee is not entitled to vote your shares if no instructions are received from you. Broker non-votes and abstentions, if any, will have the effect as a vote **AGAINST** each of the Nominees.
- With respect to the Say-on-Pay Proposal, the Say-on-Frequency Proposal, your broker, bank or other nominee is not entitled to vote your shares if no instructions are received from you. Broker non-votes and

abstentions, if any, will not be counted as votes cast and will have no effect with respect to these proposals.

## TABLE OF CONTENTS

### **Revoking Your Proxy**

If you are a record holder of Old Shares and you validly authorize a proxy, you may revoke your proxy prior to the close of voting at the Annual Meeting in any of the following five ways:

- Revoke your proxy at the Internet site [www.proxyvote.com](http://www.proxyvote.com) by 11:59 p.m. on March 13, 2017;
- Revoke your proxy by calling 1-800-776-9437 by 11:59 p.m. on March 13, 2017;
- Deliver a written notice of revocation to our Secretary before the proxy has been exercised; or
- Prior to the exercise of the proxy, submit a duly authorized proxy bearing a later date by mail, telephone or internet in accordance with the procedures set forth above;
- Vote in person at the Annual Meeting (but your attendance at the Annual Meeting, in and of itself, will not revoke the proxy).

If your Old Shares are held through a broker, bank, trust or other nominee, you should contact your broker, bank, trust or other nominee to change your vote.

### **Solicitation of Proxies**

We will bear all expenses incurred in connection with the printing and mailing of this proxy statement/prospectus. We will also request banks, brokers, trusts and other nominees holding Old Shares beneficially owned by others to send this proxy statement/prospectus to, and obtain proxies from, the beneficial owners and we will, upon request, reimburse the holders for their reasonable expenses in so doing. Solicitation of proxies by mail may be supplemented by telephone, other electronic means and personal solicitation by our officers and our employees. No additional compensation will be paid to our officers and employees for those solicitation efforts.

We have hired D.F. King to assist in the solicitation of proxies from brokers, nominees, institutions and individuals. We will pay D.F. King a fee of \$7,500, plus reasonable expenses, for these services.

### **Other Matters**

We are not aware of any business that may properly be acted on at the Annual Meeting, except as described in this proxy statement/prospectus. If any other matters are properly presented at the Annual Meeting, the persons appointed as proxies or their substitutes will vote or act on such matters in their discretion and according to applicable law and regulations unless the proxy indicates otherwise.

## TABLE OF CONTENTS

### **THE AMENDMENT PROPOSAL**

Old BRT's board of trustees unanimously approved the Amendment, which clarifies that Old BRT may convert its form and jurisdiction of organization, provided that conversion is approved by the affirmative vote of not less than a majority of Old Shares then outstanding and entitled to vote. The Amendment is annexed hereto as Annex A.

### **THE OLD BRT BOARD OF TRUSTEES UNANIMOUSLY RECOMMENDS THAT THE OLD BRT SHAREHOLDERS VOTE FOR THE AMENDMENT PROPOSAL.**

### **THE CONVERSION PROPOSAL**

#### **General**

The Old BRT board of trustees has unanimously approved and recommends that the shareholders approve the Conversion, in accordance with the terms of the Conversion Plan, including adoption of the Articles of Conversion and the New BRT Charter under the laws of the State of Maryland, each to become effective at or about the Effective Time. In addition, at the Effective Time, the New BRT Bylaws will go into effect, subject to modification as described in this proxy statement/prospectus if the New BRT Bylaw Proposals are not adopted by the shareholders at the Annual Meeting. The following discussion summarizes certain aspects of the conversion from a Massachusetts business trust to a Maryland corporation. This summary does not purport to be complete and is qualified in its entirety by reference to the Conversion Plan, annexed to this proxy statement/prospectus as Annex B, the New BRT Charter, annexed to this proxy statement/prospectus as Annex C, the New BRT Bylaws, annexed to this proxy statement/prospectus as Annex D and the Articles of Conversion, annexed to this proxy statement/prospectus as Annex E. The Old BRT board of trustees unanimously recommends that the BRT shareholders vote FOR the Conversion Proposal.

#### **Reasons for the Conversion**

The purpose of the Conversion is to convert the jurisdiction of organization of Old BRT from Massachusetts to Maryland and to change the legal form of Old BRT from a Massachusetts business trust to a corporation. Our board of trustees determined that these changes are in the best interests of our shareholders because (i) the change would make us more comparable to our peers inasmuch as approximately 80% of the public companies that qualify as REITs under the Code are currently organized under Maryland law and there are no other exchange listed REITs that are organized as a Massachusetts business trust, (ii) in comparison to Massachusetts, Maryland has a comprehensive regulatory system governing, and courts with extensive expertise in addressing issues pertinent to, corporations operating as REITs, (iii) Maryland corporations have perpetual existence while the Massachusetts business trust has a limited life and (iv) shareholders and trustees of a Massachusetts business trust may have personal liability for the obligations of the trust while shareholders and directors of a Maryland corporation generally do not have personal liability for the obligations of the corporation. As a result of these considerations, our board of trustees has concluded that the Conversion is advisable and in the best interest of Old BRT and our shareholders.

#### **Structure and Completion of the Conversion; Effective Time of the Conversion**

Subject to the conditions to the Conversion described herein, Old BRT will convert from a business trust formed under the laws of the Commonwealth of Massachusetts to a corporation formed under the laws of the State of Maryland. At the Effective Time, the converted entity's name will change to BRT Apartments Corp.

To convert to a Maryland corporation, Old BRT will file the New BRT Charter and Articles of Conversion with the SDAT. The Articles of Conversion will specify the date and time the Conversion is to be effective. At the Effective Time, each outstanding Old Share will be converted into one share of New BRT common stock. We anticipate that the

Conversion will be completed on or about March 15, 2017.

Following the Conversion, your rights, and the limitations thereon, as a shareholder of New BRT common stock will be governed by the New BRT Charter, the New BRT Bylaws and Maryland law, which we believe are similar, but not identical, to the rights and limitations thereon of Old Shares under Old BRT. See *Comparison of Rights of Shareholders of Old BRT and New BRT* .

**THE OLD BRT BOARD OF TRUSTEES UNANIMOUSLY RECOMMENDS THAT THE OLD BRT SHAREHOLDERS VOTE FOR THE CONVERSION PROPOSAL.**



## TABLE OF CONTENTS

### **No Change in Business Jobs, Physical Location, Etc.**

The business of New BRT will be the same as the business of Old BRT and will not result in any change in headquarters, business, jobs, management, location of any of the offices, number of employees, assets, liabilities or net worth (other than as a result of the costs related to the Conversion, including legal and accounting fees). Old BRT's management, including all trustees and officers, will remain the same in connection with the Conversion and will assume identical positions with New BRT, except that the position of trustee will be referred to as a director. The Conversion is not expected to result in a change in Old BRT's current trading status on the New York Stock Exchange, which is referred to as the NYSE, and the New Shares will trade on the NYSE under the ticker symbol BRT upon the effective time of the conversion. The Conversion will effect certain changes of a legal nature, the most significant of which are described in the section entitled. *Comparison of Rights of Shareholders of Old BRT and New BRT.*

### **Certain Other Effects of the Conversion**

The Conversion Plan and the MGCL effectively provide that New BRT is a continuation of Old BRT and that the obligations and rights of Old BRT will continue as obligations and rights of New BRT, without impairment. Specifically, the Conversion Plan and the MGCL provide that:

- New BRT shall be deemed to be the same entity as Old BRT;
- the Conversion shall not affect, invalidate, terminate, suspend or nullify any licenses, permits or registrations granted to Old BRT before the Conversion;
- as a result of the Conversion, any existing claim, action or proceeding pending by or against Old BRT may be prosecuted to judgment as if the Conversion had not taken place, or, on motion of the other entity or any other party, New BRT may be substituted as a party and a judgment against Old BRT constitutes a lien on the property of New BRT;
- New BRT shall be liable for all the debts and obligations of Old BRT and the Conversion shall not affect any debts, obligations or liabilities of Old BRT or impair the rights of creditors or any liens on the property of the Old BRT; and
- the ownership interests of the holders of Old Shares shall cease to exist as ownership interests in Old BRT and continue to exist as shares of New BRT common stock.

### **Conditions to Completion of the Conversion; Termination of the Plan**

The completion of the Conversion is subject to the approval by the affirmative vote of holders of a majority of the outstanding Old Shares at the Annual Meeting of the Required Conditions Proposals. However, even if the Required Conditions Proposals are approved, the Old BRT board of trustees may terminate the Conversion if Old BRT's board of trustees determines that the Conversion is no longer advisable and in the best interest of Old BRT and its shareholders or may defer the timing of the Conversion. The board of trustees may deem the Conversion to be inadvisable if, among other things:

- the NYSE has not approved the listing of the shares of New BRT common stock to be issued in connection with the Conversion, subject to official notice of issuance; or
- if necessary consents or approvals from lenders are not obtained;
- Old BRT does not receive an opinion from Troutman Sanders LLP as to certain tax matters relating to the qualification of the Conversion as a tax-free reorganization, the preservation of Old BRT's net operating loss carry forward and Old BRT and New BRT's qualification as a REIT.

We have no current intention of abandoning the Conversion if shareholder approval of the Required Conditions Proposals is obtained.

### **Regulatory Approvals**

We are not aware of any federal, state, local or foreign regulatory requirements that must be complied with or regulatory approvals that must be obtained prior to completion of the Conversion, other than compliance with applicable federal and state securities laws.

## TABLE OF CONTENTS

### **Absence of Dissenters (or Appraisal) Rights**

Pursuant to Massachusetts law and the Trust Declaration, Old BRT shareholders will not be entitled to dissenters rights of appraisal in connection with, or as a result, of the Conversion.

### **Restrictions on Transfer of New BRT Common Stock Issued as a Result of the Conversion**

The shares of New BRT common stock to be issued in connection with the Conversion will, subject to restrictions on ownership and transfer of New BRT stock set forth in the New BRT Charter, be freely transferable under the Securities Act, except for shares issued to any shareholder who may be deemed to be an affiliate of New BRT for purposes of Rule 144 promulgated under the Securities Act. Persons who may be deemed to be affiliates include individuals or entities that control, are controlled by, or are under the common control with, New BRT and may include executive officers, directors and significant shareholders of New BRT. Shares of New BRT common stock will be subject to restrictions on ownership and transfer set forth in the New BRT Charter including, subject to certain exceptions, a limitation on ownership by any person of more than 6.0% of the outstanding New BRT common stock and provisions for an automatic transfer to a charitable trust of any shares owned or acquired in excess of the 6.0% limits or that would result in five or fewer individuals beneficially owning 50% or more in value of our stock or in New BRT otherwise failing to qualify as a REIT. See *Description of New BRT Stock—Restrictions on Ownership and Transfer*.

### **Treatment of Old BRT's Compensation Plans and Outstanding Equity Awards in the Conversion**

At the Effective Time, New BRT will be deemed to have assumed Old BRT's equity incentive related plans and applicable award agreements, which include the Old BRT Amended and Restated 2016 Incentive Plan, Old BRT's 2012 Incentive Plan and Old BRT's 2009 Incentive Plan, as amended, which we refer to collectively as the Plans. As of the Effective Time, all outstanding restricted Old Shares and all rights of participants to acquire Old Shares under the Plans, including pursuant to restricted share units issued by Old BRT, will automatically convert into an equal number of restricted shares of New BRT common stock or rights to acquire an equal number of shares of New BRT common stock, on the same terms and conditions that were in effect prior to the Conversion.

### **Conversion of Old Shares; Conversion Procedures**

#### *Conversion of Old Shares*

The Conversion Plan provides that, at the Effective Time, by virtue of the Conversion and without further action on the part of Old BRT, New BRT or the shareholders of Old BRT, each outstanding Old Share will be converted into one share of New BRT common stock. As a result of the Conversion, the Trust Declaration will cease to govern the Company, and the New BRT Charter and the New BRT Bylaws will be in effect.

#### *Conversion Procedures*

All shares of New BRT common stock issued in connection with the Conversion will be uncertificated. New BRT will register, or cause to be registered in book-entry form, the shares of New BRT common stock into which each Old Share is converted as a result of the Conversion. Until each certificate formerly representing Old Shares is surrendered, such certificate will be deemed at any time after the Effective Time to represent the shares of New BRT common stock into which such Old Shares were converted in the Conversion.

#### *Lost Certificates for Old Shares*

If a certificate formerly representing Old Shares has been lost, stolen or destroyed, New BRT will register in book-entry form the shares of New BRT common stock issued in connection with the Conversion upon receipt of an affidavit, in form satisfactory to its transfer agent, as to that loss, theft or destruction, and, if required by New BRT, the posting of a bond in such reasonable amount as New BRT's transfer agent will direct as indemnity, with such assurances as New BRT's transfer agent may reasonably require.

**Accounting Treatment of the Conversion**

The Conversion will have no effect for accounting purposes. The historical consolidated financial statements of Old BRT previously reported to the SEC as of and for all periods through the date of this proxy statement/prospectus will remain the consolidated financial statements of New BRT.

## TABLE OF CONTENTS

### **DESCRIPTION OF NEW BRT STOCK**

*The following summarizes the material terms of New BRT stock as set forth in the New BRT Charter and the New BRT Bylaws, which govern the rights of holders of New BRT stock assuming, except as otherwise indicated, that the Conversion Proposal and each of the New BRT's Organizational Documents Proposals are approved by Old BRT's shareholders and the Conversion is thereafter completed. Copies of the New BRT Charter and the New BRT Bylaws are attached as Annex C and Annex D, respectively, to this proxy statement/prospectus. While we believe that the following description covers the material terms of New BRT stock, it may not contain all of the information that is important to you. We encourage you to read carefully this entire document, the New BRT Charter and the New BRT Bylaws and the other documents we refer to for a more complete understanding of the New BRT stock following the Conversion.*

#### **General**

The New BRT Charter authorizes New BRT to issue up to 302,000,000 shares of stock, consisting of 300,000,000 shares of common stock, par value \$0.01 per share, and 2,000,000 shares of New BRT preferred stock, par value \$0.01 per share. Upon completion of the Conversion, approximately 14,045,135 shares of New BRT common stock and no shares of New BRT preferred stock are expected to be issued and outstanding.

As permitted by Maryland law, the New BRT Charter authorizes New BRT's board of directors, with the approval of a majority of the entire board of directors and without any action by New BRT's shareholders, to amend the New BRT Charter to increase or decrease the aggregate number of authorized shares of stock that New BRT is authorized to issue or the number of authorized shares of any class or series of New BRT's stock.

Under Maryland law, (i) shareholders or directors generally are not personally liable for New BRT's debts or obligations solely as a result of such status and (ii) corporations may have a perpetual existence until dissolved in accordance with Maryland law and the corporation's charter. New BRT will have perpetual existence.

Under the MGCL, a Maryland corporation generally may not dissolve, amend its charter, merge or consolidate with, or convert to, another entity, sell all or substantially all of its assets or engage in a statutory share exchange unless the action is declared advisable by the board of directors and approved by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation's charter. The New BRT Charter provides that these actions, other than certain amendments to the New BRT Charter, must be approved by a majority of all of the votes entitled to be cast on the matter. New BRT's charter generally may be amended only if such amendment is declared advisable by New BRT's board of directors and approved by the affirmative vote of shareholders entitled to cast a majority of the votes entitled to be cast on the matter, except with respect to the following matters, all of which require the affirmative vote of shareholders entitled to cast at least two-thirds of all votes entitled to be cast on the matter: (i) the number and classification of directors; (ii) indemnification of directors, officers and certain other persons; (iii) removal of directors; (iv) the vesting of exclusive power in the board of directors to adopt, alter or repeal any provision of the bylaws and to make new bylaws; (v) restrictions on ownership and transfer of shares of capital stock; (vi) provisions relating to the amendment of certain provisions of the New BRT Charter; and (vii) limitations on liability of officers and directors.

#### **New BRT Common Stock**

All of the shares of New BRT common stock offered by this proxy statement/prospectus will be duly authorized, and, when issued, will be fully paid and nonassessable. Subject to the preferential rights, if any, of holders of any other class or series of New BRT stock and to the provisions of the New BRT Charter relating to the restrictions on

ownership and transfer of New BRT stock, holders of shares of New BRT common stock are entitled to receive distributions when authorized by New BRT's board of directors and declared by New BRT out of assets legally available for distribution to shareholders and will be entitled to share ratably in assets legally available for distribution to shareholders in the event of New BRT's liquidation, dissolution or winding up after payment of or adequate provision for all of its known debts and liabilities.

Subject to the provisions of the New BRT Charter regarding the restrictions on ownership and transfer of New BRT stock, except as may be otherwise specified in the New BRT Charter, each outstanding share of New

## TABLE OF CONTENTS

BRT common stock entitles the holder to one vote, and, except as may be provided with respect to any other class or series of New BRT stock, the holders of shares of New BRT common stock will possess the exclusive voting power.

Holders of shares of New BRT common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights (unless our board of directors determine that appraisal rights apply) and have no preemptive rights to subscribe for any securities of New BRT.

### **Power to Increase or Decrease Authorized Shares of Stock, Reclassify Unissued Shares of Stock and Issue Additional Shares of Common and Preferred Stock**

As permitted under the MGCL, the New BRT Charter authorizes New BRT's board of directors, with the approval of a majority of the entire board and without shareholder approval, to amend New BRT's charter to increase or decrease the aggregate number of shares of stock that New BRT is authorized to issue or the number of shares of any class or series of stock that New BRT is authorized to issue.

In addition, the New BRT Charter authorizes New BRT's board of directors to authorize the issuance from time to time of shares of stock of any class or series, including preferred stock. The New BRT Charter also authorizes New BRT's board of directors to classify and reclassify any unissued shares of New BRT common stock or preferred stock of New BRT into other classes or series of stock, including one or more classes or series of stock that have priority over New BRT common stock, with respect to distributions or upon liquidation, and authorizes New BRT to issue the newly classified shares. Prior to the issuance of shares of each new class or series, New BRT's board of directors is required by Maryland law and by the New BRT Charter to set, subject to the provisions of the New BRT Charter regarding the restrictions on ownership and transfer of New BRT stock, the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series. These actions may be taken without shareholder approval unless such approval is required by applicable law, the terms of any other class or series of New BRT's Stock or the rules of any stock exchange or automated quotation system on which any shares of New BRT's stock are listed or traded. Therefore, New BRT's board of directors could authorize the issuance of shares of preferred stock that have priority over New BRT common stock with respect to dividends or other distributions or rights upon liquidation or the issuance of shares of common stock or preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a change in control or other transaction that might involve a premium price for New BRT common stock or otherwise be in the best interest of New BRT shareholders. Upon completion of the Conversion, no shares of New BRT preferred stock will be outstanding, and the board of trustees of Old BRT, the members of which will serve as the members of New BRT's board of directors, has no present plans to authorize the issuance of any shares of New BRT preferred stock or to classify or reclassify any unissued shares of New BRT common stock.

New BRT believes that the power of New BRT's board of directors (i) to approve amendments to the New BRT Charter to increase or decrease the number of authorized shares of stock that New BRT is authorized to issue or the number of authorized shares of any class or series of New BRT stock, (ii) to authorize New BRT to issue additional authorized but unissued shares of common or preferred stock and to classify or reclassify unissued shares of common or preferred stock and (iii) thereafter to authorize New BRT to issue such classified or reclassified shares of stock will provide New BRT with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise.

### **Restrictions on Ownership and Transfer**

In order for New BRT to qualify as a REIT under the Code, New BRT stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year. In addition, not more than 50% of the value of the outstanding shares of New BRT's stock may be

owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) at any time during the last half of a taxable year.

The New BRT Charter includes restrictions concerning the ownership and transfer of shares of New BRT's stock. New BRT's board of directors may, from time to time, grant waivers from these restrictions, in its sole discretion. The relevant sections of the New BRT Charter provide that, subject to the exceptions described below, no person or entity (including a group within the meaning of Section 13(d)(3) of the Securities Act) may own, or be deemed to own, beneficially or by virtue of the applicable constructive ownership provisions of the Code,



## TABLE OF CONTENTS

more than 6.0%, in value or in number of shares, whichever is more restrictive, of the outstanding shares of New BRT common stock (the common stock ownership limit ) or 6.0% in value of the outstanding shares of all classes or series of shares of New BRT stock (the aggregate stock ownership limit ). We refer to the common stock ownership limit and the aggregate stock ownership limit collectively as the ownership limits. We refer to the person or entity that, but for operation of the ownership limits or another restriction on ownership and transfer of New BRT stock as described below, would beneficially own or constructively own shares of New BRT stock in violation of such limits or restrictions and, if appropriate in the context, a person or entity that would have been the record owner of such shares of New BRT stock as a prohibited owner.

The applicable constructive ownership rules under the Code are complex and may cause shares of New BRT stock owned beneficially or constructively by a group of related individuals and/or entities to be treated as owned beneficially or constructively by one individual or entity. As a result, the acquisition of less than 6.0% in value or in number of shares, whichever is more restrictive, of the outstanding shares of New BRT common stock, or less than 6.0% in value of the outstanding shares of all classes and series of New BRT stock (or the acquisition by an individual or entity of an interest in an entity that owns, beneficially or constructively, shares of New BRT stock), could, nevertheless, cause that individual or entity, or another individual or entity, to own beneficially or constructively shares of New BRT stock in excess of the ownership limits.

New BRT's board of directors, in its sole discretion, may exempt, prospectively or retroactively, a person or entity from the ownership limits or establish a different limit on ownership (the excepted holder limit ). As a condition of granting the waiver or establishing the excepted holder limit, New BRT's board of directors may require representations and undertakings from the person requesting the exception as New BRT's board of directors may determine, in its sole discretion, as well as an opinion of counsel or a ruling from the IRS in order to determine or ensure New BRT's status as a REIT under the Code, in form and substance satisfactory to New BRT's board of directors, in its sole discretion. New BRT's board of directors may impose such conditions or restrictions as it deems appropriate in connection with granting such a waiver or establishing an excepted holder limit. New BRT's board of directors granted an exception for Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould.

As discussed above, in order to qualify as a REIT, not more than 50% of the value of the outstanding shares of New BRT's stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) at any time during the last half of a taxable year. As a result and as discussed below, in addition to the ownership limits, New BRT's charter prohibits any person from beneficially or constructively owning shares of New BRT stock that would result in more than 50% in value of the outstanding shares of New BRT stock to be beneficially owned by five or fewer individuals (including Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould), regardless of whether such ownership is during the last half of any taxable year, which we refer to as the Five or Fewer Limit. Thus, in order to determine how much stock a person may acquire without violating the Five or Fewer Limit, a stockholder must know how much stock is beneficially or constructively owned (within the meaning of the New BRT's Charter) by the four other largest stockholders.

Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould will be required by the Exchange Act and regulations promulgated thereunder to report, with certain exceptions, their acquisition of additional New BRT stock within two days of such acquisitions, and all holders of New BRT stock will be required to file reports of their acquisition of beneficial ownership (as defined in the Exchange Act) of more than 5% of the outstanding New BRT stock no less frequently than annually. However, beneficial ownership for purposes of the of reporting requirements under the Exchange Act is calculated differently than beneficial ownership for purposes of determining compliance with Five or Fewer Limit. In addition, to the extent that any one or more of Gould Investors, Fredric H. Gould, Matthew J. Gould or Jeffrey A. Gould acquires 30% or more of the outstanding New BRT stock, ownership by four individuals of five percent or less of the outstanding New BRT stock (which would not require public disclosure) could still result in a violation of the Five or Fewer Limit and, therefore, cause newly-acquired New BRT stock be

transferred to the charitable trust. As a result, you may not have enough information currently available to you at any time to determine the percentage of ownership of New BRT stock that you can acquire without violating the Five or Fewer Limit and losing the economic benefit of the ownership of such newly-acquired shares.

In connection with granting a waiver of the ownership limits or creating an excepted holder limit or at any other time, New BRT's board of directors may from time to time increase or decrease the common stock

TABLE OF CONTENTS

ownership limit, the aggregate stock ownership limit or both, for one or more persons, unless, after giving effect to such increase (but without regard to any exemptions from the ownership limits granted by the board of directors as described above), five or fewer individuals could beneficially own, in the aggregate, more than 49.9% in value of the outstanding shares of New BRT stock or New BRT would otherwise fail to qualify as a REIT under the Code. A reduced ownership limit will not apply to any person or entity whose percentage ownership of New BRT common stock or New BRT stock of all classes and series, as applicable, is, at the effective time of such reduction, in excess of such decreased ownership limit until such time as such person's or entity's percentage ownership of New BRT common stock or New BRT stock of all classes and series, as applicable, equals or falls below the decreased ownership limit, but any further acquisition of shares of New BRT common stock or New BRT stock of all classes or series, as applicable, will violate the decreased ownership limit.

The New BRT Charter further prohibits:

- any person from beneficially or constructively owning, applying certain attribution rules of the Code, shares of New BRT stock that would result in New BRT being closely held under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise cause New BRT to fail to qualify as a REIT under the Code; and
- any person from transferring shares of New BRT stock if the transfer would result in shares of New BRT stock being beneficially owned by fewer than 100 persons (determined under the principles of Section 856(a)(5) of the Code).

Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of shares of New BRT stock that will or may violate the ownership limits or any of the other restrictions on ownership and transfer of New BRT stock described above, or who would have owned shares of New BRT stock transferred to the trust as described below, must immediately give written notice to New BRT of such event or, in the case of an attempted or proposed transaction, give New BRT at least 15 days prior written notice and provide New BRT with such other information as New BRT may request in order to determine the effect of such transfer on New BRT's status as a REIT under the Code.

If any transfer of shares of New BRT stock would result in shares of New BRT stock being beneficially owned by fewer than 100 persons, the transfer will be null and void and the intended transferee will acquire no rights in the shares. In addition, if any purported transfer of shares of New BRT stock or any other event would otherwise result in any person violating the ownership limits or an excepted holder limit established by New BRT's board of directors, or in New BRT being closely held under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or otherwise failing to qualify as a REIT under the Code, then that number of shares (rounded up to the nearest whole share) that would cause the violation will be automatically transferred to, and held by, a trust for the exclusive benefit of one or more charitable organizations selected by New BRT, and the intended transferee or other prohibited owner will acquire no rights in the shares. The automatic transfer will be effective as of the close of business on the business day prior to the date of the violative transfer or other event that results in a transfer to the trust. If the transfer to the trust as described above is not automatically effective, for any reason, to prevent violation of the applicable ownership limits or New BRT being closely held under Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year) or New BRT otherwise failing to qualify as a REIT under the Code, then the New BRT Charter provides that the transfer of the number of shares that would cause the violation will be null and void and the intended transferee will acquire no rights in such shares.

Shares of New BRT stock held in the trust will be issued and outstanding shares. The prohibited owner will not benefit economically from ownership of any shares of New BRT stock held in the trust and will have no rights to distributions and no rights to vote or other rights attributable to the shares of New BRT stock held in the trust. The trustee of the trust will exercise all voting rights and receive all distributions with respect to shares held in the trust for

the exclusive benefit of the charitable beneficiary of the trust. Any distribution made before New BRT discovers that the shares have been transferred to a trust as described above must be repaid by the recipient to the trustee upon demand by New BRT. Subject to Maryland law, effective as of the date that the shares have been transferred to the trust, the trustee will have the authority to rescind as void any vote cast by a

TABLE OF CONTENTS

prohibited owner before New BRT's discovery that the shares have been transferred to the trust and to recast the vote in accordance with the desires of the trustee acting for the benefit of the charitable beneficiary of the trust. However, if New BRT has already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

Shares of New BRT stock transferred to the trustee are deemed offered for sale to New BRT, or New BRT's designee, at a price per share equal to the lesser of (i) the price paid by the prohibited owner for the shares (or, if the event causing the shares to be held in trust did not involve a purchase of such shares at market price, the market price of the shares on the date of such event) and (ii) the market price on the date New BRT accepts, or New BRT's designee, accepts such offer. New BRT may reduce the amount so payable by the amount of any distribution that New BRT made to the prohibited owner before New BRT discovered that the shares had been automatically transferred to the trust and that are then owed by the prohibited owner to the trustee as described above, and New BRT may pay the amount of any such reduction to the trustee for distribution to the charitable beneficiary. New BRT has the right to accept such offer until the trustee has sold the shares of New BRT stock held in the trust as discussed below. Upon a sale to New BRT, the interest of the charitable beneficiary in the shares sold terminates, and the trustee must distribute the net proceeds of the sale to the prohibited owner and must distribute any dividends or other amounts held by the trustee with respect to such shares to the charitable beneficiary.

If New BRT does not buy the shares, the trustee must, within 20 days of receiving notice from New BRT of the transfer of shares to the trust, sell the shares to a person or entity designated by the trustee who could own the shares without violating the ownership limits or the other restrictions on ownership and transfer of New BRT stock. After the sale of the shares, the interest of the charitable beneficiary in the shares transferred to the trust will terminate and the trustee must distribute to the prohibited owner an amount equal to the lesser of (i) the price paid by the prohibited owner for the shares (or, if the event causing the shares to be held in trust did not involve a purchase of such shares at market price, the market price of the shares on the date of such event) and (ii) the sales proceeds (net of any commissions and other expenses of sale) received by the trust for the shares. The trustee may reduce the amount payable to the prohibited owner by the amount of any distribution that New BRT paid to the prohibited owner before New BRT discovered that the shares had been automatically transferred to the trust and that are then owed by the prohibited owner to the trustee as described above. Any net sales proceeds in excess of the amount payable to the prohibited owner must be paid immediately to the charitable beneficiary, together with any dividends or other amounts held by the trustee with respect to such shares. In addition, if, prior to the discovery by New BRT that shares of stock have been transferred to a trust, such shares of stock are sold by a prohibited owner, then such shares will be deemed to have been sold on behalf of the trust and, to the extent that the prohibited owner received an amount for or in respect of such shares that exceeds the amount that such prohibited owner was entitled to receive, such excess amount will be paid to the trustee upon demand. The prohibited owner has no rights in the shares held by the trustee.

In addition, if New BRT's board of directors determines that a transfer or other event has taken place that would violate the restrictions on ownership and transfer of New BRT stock described above, New BRT's board of directors may take such action as it deems advisable to refuse to give effect to or to prevent such transfer, including causing New BRT to redeem shares of New BRT stock, refusing to give effect to the transfer on New BRT's books or instituting proceedings to enjoin the transfer.

Every owner of 5% or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) of New BRT stock, within 30 days after the end of each taxable year, must give New BRT written notice stating the shareholder's name and address, the number of shares of each class and series of New BRT stock that the shareholder beneficially owns and a description of the manner in which the shares are held. Each such owner must provide to New BRT in writing such additional information as New BRT may request in order to determine the effect, if any, of the shareholder's beneficial ownership on New BRT's status as a REIT and to ensure compliance with the ownership limits. In addition, any person or entity that is a beneficial owner or constructive owner of shares of New BRT stock and any person or entity (including the shareholder of record) who is holding shares of New BRT stock for

a beneficial owner or constructive owner must, on request, provide to New BRT such information as New BRT may request in order to determine New BRT's status as a REIT and to comply with the requirements of any taxing authority or governmental authority or to determine such compliance and to ensure compliance with the ownership limits.

TABLE OF CONTENTS

Any one or all of the foregoing restrictions on ownership and transfer of New BRT stock will not apply if New BRT's board of directors determines that it is no longer in New BRT's best interests to attempt to qualify, or to continue to qualify, as a REIT or that compliance with the applicable restriction(s) or limitation(s) is no longer required in order for New BRT to continue to qualify as a REIT under the Code.

The restrictions on ownership and transfer of New BRT stock described above could delay, defer or prevent a transaction or a change in control that might involve a premium price for New BRT common stock or otherwise be in the best interest of New BRT's shareholders.

At the Annual Meeting, Old BRT shareholders will be asked to consider and vote upon a proposal to approve the New BRT REIT Restrictions Proposal (*i.e.*, provisions of the New BRT Charter that set forth the restrictions on ownership and transfer of New BRT stock described above).

**Transfer Agent and Registrar**

The transfer agent and registrar for New Shares will be American Stock Transfer & Trust Co., LLC, New York.

## TABLE OF CONTENTS

### **CERTAIN PROVISIONS OF MARYLAND LAW AND OF THE NEW BRT CHARTER AND NEW BRT BYLAWS**

*The following summary of certain provisions of Maryland law and the New BRT Charter and the New BRT Bylaws may not contain all of the information that is important to you, and we encourage you to carefully read the New BRT Charter, the New BRT Bylaws and the relevant provisions of Maryland law for a more complete understanding of these provisions. Copies of the New BRT Charter and the New BRT Bylaws are attached as Annex C and Annex D, respectively, to this proxy statement/prospectus, and to the extent that this proxy statement/prospectus, including the following summary, relates to those documents, it is qualified in its entirety by reference thereto. Except as otherwise noted, the summary set forth below assumes that each of the New BRT Organizational Proposals will be adopted at the Annual Meeting.*

#### **New BRT's Board of Directors**

New BRT's board of directors will initially consist of ten directors. Immediately following the Conversion, New BRT's board of directors will consist of the same individuals who comprise Old BRT's board of trustees immediately prior to the Conversion.

The New BRT Charter provides that the number of New BRT directors may only be increased or decreased pursuant to the New BRT Bylaws. The New BRT Bylaws provide that the number of New BRT directors may be established, increased or decreased by New BRT's board of directors but, unless the New BRT Bylaws are amended, may not be fewer than the minimum number required by the MGCL, which is one, nor more than fifteen.

The New BRT Charter provides for a staggered board of directors consisting of three classes of directors. Directors of each class are elected for three-year terms and until their successors are duly elected and qualify. Each year one class of our directors will be elected by our stockholders. Old BRT's Class I, Class II and Class III trustees will continue to serve in the same classes as directors of New BRT. The terms of the Class I, Class II, and Class III directors will expire at our annual meetings of stockholders in 2018, 2019 and 2020 respectively, and until their successors are duly elected and qualify.

We believe that the classification of New BRT's board of directors helps to assure the continuity and stability of our business strategies and policies as determined by New BRT's board of directors. This classified board provision could have the effect of making the replacement of incumbent directors more time-consuming and difficult since at least two annual meetings of stockholders will generally be required to effect a change in a majority of our board of directors.

#### **Election of Directors; Removals; Vacancies**

Holders of shares of New BRT common stock will have no right to cumulative voting in the election of directors. Under the New BRT Charter and the New BRT Bylaws, each of New BRT's directors will be elected by a majority of the votes cast by the holders of New BRT common stock in the election of such director, except in a contested election or if the Majority Voting in Election of Directors Proposal is not approved by the Old BRT shareholders at the Annual Meeting.

In a contested election, directors will be elected by a plurality of the votes cast at a meeting of shareholders duly called and at which a quorum is present. An election is considered contested if, as of the date of the proxy statement for the meeting of shareholders at which directors are to be elected, there are more nominees for election than the number of directors to be elected. Pursuant to New BRT's corporate governance guidelines, any nominee for director who is an incumbent director but who is not elected by the vote required in the New BRT Bylaws, and with respect to whom no successor has been elected, must promptly tender his or her offer to resign to New BRT's board of directors



for its consideration. The Nominating and Corporate Governance Committee will consider such offer and recommend to New BRT's board of directors whether to accept the offer to resign. No later than the next regularly-scheduled board meeting to be held at least ten days after the date of the election, New BRT's board of directors will decide whether to accept the offer to resign. New BRT's board of directors will promptly and publicly disclose its decision. The nominee may address the Nominating and Governance Committee and/or New BRT board of directors, but may not be present during deliberations or voting on whether to accept the nominee's offer to resign. If the resignation is not accepted, the director will continue to serve until the next annual meeting of shareholders and until the director's successor is duly elected

## TABLE OF CONTENTS

and qualifies or until the director's earlier resignation or removal. The Nominating and Governance Committee and New BRT's board of directors may consider any factors they deem relevant in deciding whether to accept a director's resignation.

If the Old BRT shareholders do not approve the Majority Voting in Election of Directors Proposal, the New BRT Bylaws will be revised to provide that a New BRT director will be elected by holders of a majority of the shares outstanding and entitled to vote in the election of such director.

Pursuant to the New BRT Charter, New BRT will elect to be subject to the provision of Subtitle 8 of Title 3 of the MGCL regarding the filling of vacancies on our board of directors. Accordingly, except as may be provided by New BRT's board of directors in setting the terms of any class or series of stock, any and all vacancies on New BRT's board of directors may be filled only by the affirmative vote of a majority of the remaining directors in office, even if the remaining directors do not constitute a quorum, and any director elected to fill a vacancy shall serve for the remainder of the full term of the directorship in which such vacancy occurred and until a successor is elected and qualifies.

Subject to Old BRT's shareholder approval of the New BRT Director Removal Proposal, the New BRT Charter provides that, subject to the rights of holders of one or more classes or series of preferred stock to elect or remove one or more directors, any director or the entire board of directors may be removed only for cause and only by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes entitled to be cast generally in the election of directors. Cause means, with respect to any particular director, a conviction of a felony or a final judgment of a court of competent jurisdiction holding that such director caused demonstrable, material harm to New BRT through bad faith or active and deliberate dishonesty. This provision, when coupled with the exclusive power of New BRT's board of directors to fill vacancies on its board of directors, precludes shareholders from (1) removing incumbent directors except upon a substantial affirmative vote and for cause and (2) filling the vacancies created by such removal with their own nominees.

If the New BRT Director Removal Proposal is not approved by the Old BRT shareholders at the Annual Meeting, the New BRT Charter will include the alternative language set forth in the New BRT Charter included in this proxy statement/prospectus as Annex C, to provide that a director of New BRT may be removed, with or without cause, at any meeting of shareholders by the affirmative vote of shareholders entitled to cast a majority of the votes entitled to be cast generally in the election of directors.

### **Business Combinations**

Under the MGCL, certain business combinations (including a merger, consolidation, statutory share exchange or, in certain circumstances, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and any interested shareholder, or an affiliate of such an interested shareholder, are prohibited for five years after the most recent date on which the interested shareholder becomes an interested shareholder. Maryland law defines an interested shareholder as:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation's outstanding voting stock; or
- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding voting stock of the corporation.

A person is not an interested shareholder if the board of directors approved in advance the transaction by which the person otherwise would have become an interested shareholder. In approving a transaction, however, the board of directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it.

Edgar Filing: BRT REALTY TRUST - Form S-4/A

After such five-year period, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held
- by the interested shareholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested shareholder.

## TABLE OF CONTENTS

These supermajority approval requirements do not apply if, among other conditions, the corporation's common shareholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested shareholder for its shares.

These provisions of the MGCL do not apply, however, to business combinations that are approved or exempted by a Maryland corporation's board of directors prior to the time that the interested shareholder becomes an interested shareholder.

Pursuant to the statute, New BRT will elect, by resolution, to exempt from the Maryland Business Combination Act all business combinations between New BRT and any other person, provided that such business combination is first approved by New BRT's board of directors (including a majority of directors who are not affiliates or associates of such person). As a result, any person described above may be able to enter into business combinations with New BRT that may or may not be in the best interest of New BRT's shareholders, without compliance by New BRT with the supermajority vote requirements and other provisions of the statute.

New BRT cannot assure you that New BRT's board of directors will not opt to be subject to such business combination provisions in the future. However, an alteration or repeal of this resolution will not have any effect on any business combinations that have been consummated or upon any agreements existing at the time of such modification or repeal.

### **Control Share Acquisitions**

The MGCL provides that a holder of control shares of a Maryland corporation acquired in a control share acquisition has no voting rights with respect to such shares except to the extent approved by the affirmative vote of at least two-thirds of the votes entitled to be cast on the matter, excluding shares of stock of the corporation in respect of which any of the following persons is entitled to exercise or direct the exercise of the voting power of such shares in the election of directors: (i) a person who has made or proposes to make the control share acquisition; (ii) an officer of the corporation or (iii) an employee of the corporation who is also a director of the corporation. Control shares are voting shares of stock which, if aggregated with all other such shares of stock owned by the acquirer, or in respect of which the acquirer is entitled to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), would entitle the acquirer to exercise voting power in electing directors within one of the following ranges of voting power: (A) one-tenth or more but less than one-third; (B) one-third or more but less than a majority or (C) a majority or more of all voting power. Control shares do not include shares that the acquiring person is then entitled to vote as a result of having previously obtained shareholder approval or shares acquired directly from the corporation. A control share acquisition means the acquisition of issued and outstanding control shares, subject to certain exceptions.

A person who has made or proposes to make a control share acquisition, upon satisfaction of certain conditions (including an undertaking to pay expenses and making an acquiring person statement as described in the MGCL), may compel the corporation's board of directors to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any shareholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then, subject to certain conditions and limitations, the corporation may redeem for fair value any or all of the control shares (except those for which voting rights have previously been approved). Fair value is determined, without regard to the absence of voting rights for the control shares, as of the date of the last control share acquisition by the acquirer or, if a meeting of shareholders is held at which the voting rights of such shares are considered and not approved, as of the date of the meeting. If voting rights for control shares are approved at a shareholders meeting and the acquirer becomes entitled to exercise or direct the exercise of a majority of all voting power, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for

purposes of such appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition.

The control share acquisition statute does not apply to (i) shares acquired in a merger, consolidation or statutory share exchange if the corporation is a party to the transaction or (ii) acquisitions of shares previously approved or exempted by the charter or bylaws of the corporation.

## TABLE OF CONTENTS

As permitted by the MGCL, the New BRT Bylaws contain a provision opting out of the Maryland Control Share Acquisition Act. This provision may be amended or eliminated at any time in the future by New BRT's board of directors.

### **Subtitle 8**

Subtitle 8 of Title 3 of the MGCL permits a Maryland corporation with a class of equity securities registered under the Exchange Act and at least three independent directors to elect to be subject, by provision in its charter or bylaws or a resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to any or all of five provisions of the MGCL which provide, respectively, for:

- a classified board;
- a two-thirds vote requirement for removing a director;
- a requirement that the number of directors be fixed only by vote of the board of directors;
- a requirement that a vacancy on the board be filled only by the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred; or
- a majority requirement for the calling of a special meeting of shareholders.

The New BRT Charter provides that, at such time as New BRT becomes eligible to make a Subtitle 8 election (which we expect will be upon the completion of the Conversion) and except as may be provided by New BRT's board of directors in setting the terms of any class or series of stock, New BRT elects to be subject to the provisions of Subtitle 8 relating to the filling of vacancies on New BRT's board of directors. Through provisions in the New BRT Charter and the New BRT Bylaws unrelated to Subtitle 8, New BRT already (1) has a classified board, (2) unless the New BRT Director Removal Proposal is not approved, requires a two-thirds vote for the removal of any director from the board, which removal must be for cause, (3) vests in the board the exclusive power to fix the number of directorships, subject to limitations set forth in the New BRT Charter and the New BRT Bylaws, and (4) requires the request of shareholders entitled to cast a majority of all votes entitled to be cast in order to call a special meeting to act on any matter upon the request of shareholders.

### **Approval of Extraordinary Actions; Amendments to the New BRT Charter and the New BRT Bylaws**

Under the MGCL, a Maryland corporation generally may not dissolve, merge or consolidate with, or convert to, another entity, sell all or substantially all of its assets or engage in a statutory share exchange unless the action is declared advisable by the board of directors and approved by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation's charter. The New BRT Charter provides that these actions, other than certain amendments to the New BRT Charter as described below, must be approved by a majority of all of the votes entitled to be cast on the matter.

The New BRT Charter generally may be amended only if such amendment is declared advisable by New BRT's board of directors and approved by the affirmative vote of shareholders entitled to cast a majority of the votes entitled to be cast on the matter, except with respect to the following matters, all of which require the affirmative vote of stockholders entitled to cast at least two-thirds of all votes entitled to be cast on the matter: (i) the number and classification of directors; (ii) the indemnification and limitations on liability of directors, officers and certain other persons; (iii) the removal of directors; (iv) the vesting of exclusive power in the board of directors to adopt, alter or repeal any provision of the bylaws and to make new bylaws; (v) the restrictions on ownership and transfer of shares of stock; and (vi) the vote required to amend any of the foregoing provisions.

If the New BRT Director Removal Proposal is not approved by the Old BRT shareholders at the Annual Meeting, the New BRT Charter will include the alternative language set forth in the New BRT Charter included in this proxy

statement/prospectus as Annex C, to provide that amendments to the provisions of the New BRT Charter relating to the removal of directors may be amended if such amendment is declared advisable by New BRT's board of directors and approved by the affirmative vote of shareholders entitled to cast a majority of the votes entitled to be cast on the matter.

The New BRT Charter and the New BRT Bylaws provide that New BRT's board of directors has the exclusive power to adopt, alter or repeal any provision in the New BRT Bylaws and to make new bylaws.

## TABLE OF CONTENTS

### **Meetings of Shareholders**

Under the New BRT Bylaws, annual meetings of shareholders will be held each year at a date and time determined by New BRT's board of directors. Subject to the approval by the shareholders of Old BRT of the Special Shareholder Meeting Proposal, the New BRT Bylaws provide that (i) special meetings of shareholders may be called only by New BRT's chairman, chief executive officer, president or New BRT's board of directors; (ii) subject to the satisfaction of certain procedural and informational requirements by the shareholders requesting the meeting, a special meeting of shareholders to act on any matter that may properly be considered at a meeting of shareholders must also be called by New BRT's secretary upon the; and (iii) written request of shareholders entitled to cast a majority of all the votes entitled to be cast on such matter at the meeting. Only matters set forth in the notice of the special meeting may be considered and acted upon at such a meeting.

If the Old BRT shareholders do not approve the Special Shareholder Meeting Proposal, the New BRT Bylaws will be revised to provide, as similarly provided in the Trust Declaration, that special meetings of shareholders may be called by the President or a majority of the directors of New BRT, and shall be called upon the written request of shareholders holding not less than 20% of the outstanding shares of New BRT stock having voting rights, such request to specify the purpose(s) for which such meeting is to be called.

### **Advance Notice of Director Nominations and New Business**

The New BRT Bylaws provide that nominations of individuals for election as directors and proposals of business to be considered by shareholders at any annual meeting may be made only (1) pursuant to New BRT's notice of the meeting, (2) by or at the direction of New BRT's board of directors or (3) by any shareholder who was a shareholder of record at the record date set by New BRT's board of directors for the purpose of determining shareholders entitled to vote at the meeting, at the time of giving the notice required by the New BRT Bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each of the individuals so nominated or on such other proposed business and who has complied with the advance notice procedures of the New BRT Bylaws. Shareholders generally must provide notice to New BRT's secretary not earlier than the 150th day or later than the close of business on the 120th day before the first anniversary of the date that New BRT's proxy statement is released to the shareholders for the preceding year's annual meeting of shareholders.

Only the business specified in the notice of the meeting may be brought before a special meeting of shareholders. Nominations of individuals for election as directors at a special meeting of shareholders may be made only (1) by or at the direction of New BRT's board of directors, or (2) if the special meeting has been called in accordance with the New BRT Bylaws for the purpose of electing directors, by any shareholder who was a shareholder of record at the record date set by New BRT's board of directors for purposes of determining shareholders entitled to vote at the meeting, at the time of giving the notice required by the New BRT Bylaws and at the time of the meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the advance notice procedures of the New BRT Bylaws. Shareholders generally must provide notice to New BRT's secretary not earlier than the 120th day before such special meeting or later than the close of business on the 90th day before the special meeting or, if later, the tenth day after the first public announcement of the date of the special meeting and the nominees proposed by New BRT's board of directors to be elected at the meeting.

A shareholder's notice must contain certain information specified by the New BRT Bylaws about the shareholder, its affiliates and any proposed business or nominee for election as a directors, including information about the economic interest of the shareholder, its affiliates and any proposed nominee in New BRT.

### **Exclusive Forum**



Edgar Filing: BRT REALTY TRUST - Form S-4/A

The New BRT Bylaws provide that, unless New BRT's board of directors agrees otherwise, (a) any derivative action or proceeding, (b) any action asserting a claim of breach of any duty owed by any of New BRT's directors, officers or other employees to New BRT or to New BRT's shareholders, (c) any action asserting a claim against New BRT or any of New BRT's directors, officers or other employees pursuant to the MGCL, the New BRT Charter or the New BRT Bylaws and (d) claims governed by the internal affairs doctrine, must be brought in the Circuit Court for Baltimore City, Maryland, or the Supreme Court of Nassau County, New York (or, if neither such court has jurisdiction, the United States District Court for the District of Maryland, Baltimore Division, or the United States District Court for the Eastern District of New York).

TABLE OF CONTENTS

**Limitations of Liability and Indemnification of Directors and Officers**

For information concerning limitations of liability and indemnification applicable to our directors and officers, see *Limitations of Liability and Indemnification of Directors and Officers* .

**Restrictions on Ownership and Transfer of New BRT s Stock**

Except with regard to persons exempted by New BRT s board of directors from the ownership and transfer restrictions of the New BRT Charter, no person may beneficially or constructively own more than 6.0% (in value or number of shares, whichever is more restrictive) of the outstanding New BRT common stock or more than 6.0% (in value) of all classes or series of New BRT stock. See *Description of New BRT Stock—Restrictions on Ownership and Transfer* .

**Qualification as a REIT**

The New BRT Charter provides that New BRT s board of directors may revoke or otherwise terminate New BRT s REIT election under the Code, without approval of New BRT s shareholders, if it determines that it is no longer in New BRT s best interests to continue to be qualified as a REIT under the Code. The board of trustees of Old BRT, the members of which will serve as the directors of New BRT following the Conversion, has no plans to terminate New BRT s status as a REIT under the Code.

**TABLE OF CONTENTS**

**COMPARISON OF RIGHTS OF SHAREHOLDERS OF OLD BRT AND NEW BRT**

*The following is a summary comparison of material differences between the rights of Old BRT’s shareholders under Massachusetts law and the Trust Declaration and Old BRT’s bylaws (the “Old Bylaws”; and together with the Trust Declaration, the “Old BRT organizational documents”), on the one hand, and the rights of New BRT shareholders under the Maryland General Corporation Law (the “MGCL”) and the New BRT Charter and the New BRT Bylaws, on the other hand. The summary set forth below is not intended to be an exhaustive discussion of the foregoing and may not contain all the information that is important to you. The summary set forth below assumes, except as otherwise indicated, that the New BRT Organizational Documents Proposals will be adopted at the Annual Meeting. We encourage you to carefully read the Trust Declaration, the Old Bylaws and Mass Gen Laws Ch. 182 and the New BRT Charter, the New BRT Bylaws and the MGCL in their entirety. For information on how to obtain the Old BRT organizational documents, see Additional Information. A copy of the New BRT Charter and the New BRT Bylaws are attached as Annex C and Annex D, respectively, to this proxy statement/prospectus, and to the extent that this proxy statement/prospectus, including the following summary, relates to those documents, it is qualified in its entirety by reference thereto.*

**GENERAL**

As a holder of shares of Old BRT, your rights are governed by Massachusetts law, and the Trust Declaration and Old BRT Bylaws. If the Conversion, is completed shareholders of Old BRT will become shareholders of New BRT and your rights as a holder of shares of New BRT common stock will be governed by the MGCL and the New BRT Charter and the New BRT Bylaws. There are several differences between Massachusetts and Maryland law, as well as between the organizational documents of Old BRT and New BRT.

The New BRT Charter and the New Bylaws and the MGCL may contain provisions that could have the effect of delaying, deferring or preventing a transaction or a change in control of New BRT by means of a tender offer, proxy contest or otherwise that might involve a premium price for holders of shares of New BRT common stock or otherwise be in the best interest of New BRT shareholders. See *Comparison of Rights of Shareholders of Old BRT and New BRT—Certain Takeover Defense Provisions of Maryland Law and the New BRT Charter and the New BRT Bylaws* .

**Old BRT**

**New BRT**

**Corporate Structure**

Old BRT is a Massachusetts business trust that qualifies as a real estate investment trust under the Code. The rights of Old BRT’s shareholders are governed by Massachusetts law and Old BRT’s organizational documents (*i.e.*, the Trust Declaration and the Old Bylaws).

New BRT is a Maryland corporation that will be organized in a manner designed to enable it to qualify as a real estate investment trust under the Code. The rights of New BRT shareholders will be governed by the MGCL and New BRT Charter and the New BRT Bylaws.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Purpose/Investment Objective

The Trust Declaration provides that Old BRT's investment objective is to invest in real property, mortgage loans, and other investments related to real property in such proportions as the trustees may deem advisable from time to time in light of changing economic conditions. Except as specifically provided in the Trust Declaration, there is no specified asset allocation required with respect to any type or category of investments. Investments by Old BRT may be made in various combinations and may involve participations with other persons. The Trust Declaration provides that Old BRT, with specified exceptions, is prohibited from: (i) investing in commodities, foreign currencies, bullion, chattels; (ii) investing in real estate contracts for sale in excess of a value of 1% of Old BRT's total assets; (iii) engaging in any short sale; (iv) issuing "redeemable securities" as defined in the Investment Company Act of 1940; (v) holding securities as a result of which Old BRT would fail to qualify as a REIT under the Code; (v) engaging in trading as compared with investment activities, or engaging in the business of underwriting securities issued by others; (vi) holding property primarily for sale to customers in the ordinary course of the trade or business; and (vii) investing in equity securities of any person which, to the knowledge of the trustees of Old BRT, is then holding investments or engaging in activities prohibited to Old BRT, if, after giving effect to such investment, the aggregate value of such investments would exceed 5% of the total assets of Old BRT.

The New BRT Charter states that New BRT is formed to engage in any lawful act or activity (including, without limitation or obligation, engaging in business as a REIT under the Code) for which corporations may be organized under the general laws of the State of Maryland. The New BRT Charter further provides that for so long as New BRT elects to qualify for federal income tax treatment as a REIT, the New BRT board of directors shall use its reasonable best efforts to take such actions as are necessary or appropriate to preserve the status of New BRT as a REIT; however, if the New BRT board of directors determines that it is no longer in the best interests of New BRT to attempt to, or continue to, qualify as a REIT under the Code, such board may authorize New BRT to revoke or otherwise terminate its REIT election pursuant to the Code.

Duration

The Trust Declaration provides that subject to earlier termination as provided therein, Old BRT continues in existence until the expiration of 20 years after the death of the last survivor of the initial trustees named in the Trust Declaration and the other person(s) named therein.

The duration of New BRT is perpetual, subject to earlier termination as provided for by the MGCL.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Personal Liability Shareholders

Shareholders of a Massachusetts business trust are not automatically shielded by virtue of the form of organization from the liabilities of such entity. Instead, a trust's declaration of trust typically provides that a shareholder will not be liable for the liabilities of the trust, and further provides for indemnification to the extent that a shareholder is found personally liable for the trust's acts or obligations. The Trust Declaration provides that no shareholder will be subject to any personal liability whatsoever in connection with Old BRT's properties or activities; and provides further that Old BRT shall indemnify and hold each shareholder harmless from and against all liabilities, including attorney's fees reasonably incurred, as a result of being or having been a shareholder, except with respect to taxes assessed against them because of ownership of Old Shares and losses suffered because of changes in the market value of Old Shares.

The MGCL provides that shareholders of a Maryland corporation are generally shielded from personal liability for the corporation's debts or obligations.

Limitation of Liability

The Trust Declaration provides that none of its trustees, officers, employees and agents (each, an Old BRT Indemnified Party and collectively, the Old BRT Indemnified Parties ) shall be (i) subject to any personal liability whatsoever to any other person in connection with Old BRT's affairs or its property, except to the extent it arises from the Old BRT Indemnified Party's bad faith, willful misconduct, gross negligence or reckless disregard of his duties or for his failure to act in good faith in the reasonable belief that his action was in the best interest of Old BRT; and (ii) liable to Old BRT or to any shareholder or any Old BRT Indemnified Party for any action or failure to act except for his own bad faith, willful misconduct, gross negligence or reckless disregard of his duties or for his failure to act in good faith in the reasonable belief that his action was in the best interests of Old BRT.

As permitted by Maryland law, the New BRT Charter contains a provision that eliminates the liability of directors and officers to New BRT and its shareholders for money damages, except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty that is established by a final judgment and is material to the cause of action. See *Limitation of Liability and Indemnification of Directors and Officers*.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Indemnification

The Trust Declaration provides that Old BRT will indemnify and hold harmless its Old BRT Indemnified Parties, against all liabilities and expenses, including attorney’s fees reasonably incurred, in connection with the defense or disposition of any action, suit or proceeding in which they may be involved or which they may be threatened because of being or having been an Old BRT Indemnified Party to the fullest extent permitted by applicable law; *provided, however*, that no such indemnification shall be (i) made with respect to any matter in which the Old BRT Indemnified Party is adjudicated (A) not to have acted in good faith in the reasonable belief that his actions were in the Old BRT’s best interests or (B) to have acted with bad faith, willful misconduct or reckless disregard of his duties or gross negligence, and (ii) provided in a case where any matter is disposed of by a compromise payment by an Old BRT Indemnified Party unless such compromise payment is approved by a majority of Old BRT’s disinterested trustees or unless Old BRT has received a written opinion from independent legal counsel indicating that such Old BRT Indemnified Party appears to have acted in good faith in the reasonable belief that his action was in Old BRT’s best interests.

The New BRT Charter obligates New BRT, to the maximum extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

- any present or former director or officer of New BRT or Old BRT who is made or threatened to be made a party to, or witness in a proceeding by reason of his or her service in such capacity; and
- any individual who, while a director or officer of New BRT or Old BRT and at New BRT’s or Old BRT’s request, serves or has served as a director, officer, trustee, member, manager, or partner of another corporation, real estate investment trust, limited liability company, partnership, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to, or witness in a proceeding by reason of his or her service in such capacity;

in either case, from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in such capacity.

The New BRT Charter also requires New BRT to indemnify and advance expenses to any person who served a predecessor of New BRT (including, without limitation, Old BRT and its direct and indirect subsidiaries) in any of the capacities described above and any employee or agent of New BRT or a predecessor of New BRT.

See *Limitation of Liability and Indemnification of Directors and Officers* .

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Authorized Capital

The Trust Declaration authorizes the issuance of an unlimited number of Old Shares and 10 million preferred shares, issuable in series. As of January 17, 2017, 14,045,135 Old Shares were issued and outstanding and no preferred shares were outstanding.

The New BRT Charter authorizes New BRT to issue up to 302,000,000 shares of capital stock, consisting of 300,000,000 shares of common stock, par value \$0.01 per share, and 2,000,000 shares of preferred stock, par value \$0.01 per share.

As permitted by the MGCL, the New BRT Charter provides that New BRT's board of directors, with the approval of a majority of the entire board, and without action by the shareholders, may amend the New BRT Charter to increase or decrease the aggregate number of shares of stock that New BRT is authorized to issue or the number of shares of stock of any class or series that New BRT is authorized to issue.

We expect that, upon completion of the Conversion, 14,045,135 shares of New BRT common stock and no shares of preferred stock will be outstanding.

Classification and Issuance of Stock

The Trust Declaration authorizes Old BRT to issue up to 10 million preferred shares, in one or more series as authorized by Old BRT's board of trustees. The Trust Declaration authorizes Old BRT's board of trustees, by resolution, to specify the number of shares of such series and to fix the terms, rights, restrictions and qualifications of the series. See also – *Amendment of Articles or Charter* .

As permitted under the MGCL, the New BRT Charter authorizes New BRT's board of directors, without shareholder approval, to classify and reclassify any unissued shares of New BRT stock into other classes or series of stock and authorizes New BRT to issue the newly classified shares. Prior to the issuance of shares of each new class or series, New BRT's board of directors is required by Maryland law and by the New BRT Charter to set, subject to the provisions of the New BRT Charter regarding the restrictions on ownership and transfer of New BRT stock, the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or

series.



TABLE OF CONTENTS

**Old BRT**

**New BRT**

Amendment of Declaration of Trust or Charter

The Trust Declaration may be amended (except as to, among other things, limitations of personal liability of the shareholders and trustees) by the approval of the majority of the holders of outstanding shares entitled to vote thereon. The trustees may, with the advice of counsel and by a two-thirds vote of the trustees, amend the Trust Declaration (except as to, among other things, the limitations of personal liability of the shareholders and trustees) without the approval of shareholders, in the event Old BRT is being operated as a REIT in accordance with the applicable provisions of the Code, to the extent deemed by the trustees in good faith to be necessary to meet the requirements for qualification as a REIT under the Code. Notwithstanding the foregoing, no amendment may be made which would change any rights with respect to any outstanding shares of Old BRT stock by reducing the amount payable thereon upon liquidation of Old BRT or by diminishing or eliminating any voting rights pertaining thereto, except with the approval of the holders of two-thirds of the outstanding shares entitled to vote thereon. In the event the trustees amend the Trust Declaration without shareholder approval, such amendment must be submitted to the shareholders for their approval by the affirmative vote of the holders of not less than a majority of the beneficial shares then outstanding and entitled to vote.

Under the MGCL, a Maryland corporation generally may not amend its charter unless declared advisable by its board of directors and approved by the affirmative vote of shareholders entitled to cast at least two-thirds of the votes entitled to be cast on the matter, unless a lesser percentage (but not less than a majority of all of the votes entitled to be cast on the matter) is specified in the corporation's charter.

The New BRT Charter generally may be amended only if such amendment is declared advisable by New BRT's board of directors and approved by the affirmative vote of shareholders entitled to cast a majority of the votes entitled to be cast on the matter, except with respect to the following matters, all of which require the affirmative vote of stockholders entitled to cast at least two-thirds of all votes entitled to be cast on the matter: (i) the number and classification of directors; (ii) the indemnification and limitations on liability of directors, officers and certain other persons; (iii) the removal of directors; (iv) the vesting of exclusive power in the board of directors to adopt, alter or repeal any provision of the bylaws and to make new bylaws; (v) the restrictions on ownership and transfer of shares of stock; and (vi) the vote required to amend any of the foregoing provisions.

The Trust Declaration provides that if Old BRT is operated as a REIT under the Code, the provisions of the Trust Declaration giving shareholders the right to elect trustees and the right to amend and terminate the Trust are subject to the requirements of the Code and to the extent any provision granting or limiting such shareholders' rights conflict with the specified sections of the Code, such provision shall be deemed void and without any force or effect *ab initio*, but any action taken pursuant to any such provision shall be deemed to have been validly taken upon the vote of the trustees required under the Trust Declaration.

If the New BRT Director Removal Proposal is not approved by the Old BRT shareholders at the Annual Meeting, the New BRT Charter will include the alternative language set forth in the New BRT Charter included in this proxy statement/prospectus as Annex C, to provide that amendments to the provisions of the New BRT Charter relating to the removal of directors may be amended if such amendment is declared advisable by New BRT's board of directors and approved by the affirmative vote of shareholders entitled to cast a majority of

the votes entitled to be cast on the matter.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Amendment of Bylaws

The Trust Declaration provides that the trustees (by majority vote) may adopt and from time-to-time amend or repeal bylaws not inconsistent with the Trust Declaration. The Old Bylaws provide that the bylaws may be amended by the majority vote of the Old BRT trustees. Old BRT's organizational documents and Massachusetts law do not expressly authorize shareholders to amend or repeal the Old Bylaws.

As permitted by the MGCL, the New BRT Charter and the New BRT Bylaws provide that New BRT's board of directors has the exclusive power to adopt, alter or repeal any provisions in the New BRT Bylaws and to make new bylaws.

Extraordinary Actions