

BRT REALTY TRUST  
Form 424B3  
January 20, 2017  
TABLE OF CONTENTS

**Filed Pursuant to Rule 424(b)(3)**  
**Registration No.: 333-215221**

## **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)**

ii



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).**

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.

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.voteproxy.com](http://www.voteproxy.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.voteproxy.com](http://www.voteproxy.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?**

A. 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?**

A. 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?**

A. 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?**

A. 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?**

A. 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.

**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 E 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       |
| Earnings (loss) per beneficial share:                    |             |             |             |             |             |
| 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 424B3

- 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**

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

## 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.voteproxy.com](http://www.voteproxy.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.voteproxy.com](http://www.voteproxy.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.**

25

## 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 424B3

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**

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

The Trust Declaration provides that any action to be taken by shareholders, except as otherwise provided in the Trust Declaration or required by law, requires the affirmative vote of the holders of not less than a majority of shares then outstanding and entitled to vote. Shareholders are entitled to vote only upon the following matters: (a) election and removal of trustees; (b) the amendment, with specified exceptions, of the Trust Declaration or the termination of Old BRT; (c) any merger or consolidation of Old BRT or the sale, lease or exchange of all or substantially all of the property and assets of Old BRT; (d) termination of any agreement entered into with the advisor to Old BRT; and (e) to the same extent as the shareholders of a Massachusetts business corporation, on the question of whether or not a court action, proceeding or claim should be brought or maintained derivatively or as a class action on behalf of Old BRT or its shareholders.

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 must be approved by a majority of all of the votes entitled to be cast on the matter.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Shareholder Action by Consent

The Trust Declaration provides that, whenever shareholder action is to be taken, it may be taken without a shareholder meeting by written consent of a majority of shareholders entitled to vote on such matter (or such greater percentage as may otherwise be required by the Trust Declaration).

Under the MGCL, holders of common stock may take action only at an annual or special meeting of shareholders or by unanimous consent in lieu of a meeting unless the charter provides for a lesser percentage. The New BRT Charter permits shareholder action by consent in lieu of a meeting to the extent permitted by the New BRT Bylaws. Subject to the approval of the Old BRT's shareholders of the Shareholder Consent in Lieu of Meeting Proposal. The New BRT Bylaws provide that any action required or permitted to be taken at any meeting of shareholders may be taken without a meeting if a unanimous consent to such action is given in writing or by electronic transmission by each shareholder entitled to vote on the matter.

If the Shareholder Consent in Lieu of Meeting Proposal is not approved by Old BRT's shareholders, the New BRT Bylaws will be revised to provide that whenever shareholder action is to be taken, it may be taken without a shareholder meeting by written consent of a majority of shareholders entitled to vote on such matter (or such greater percentage as may otherwise be required by the New BRT Charter or the MGCL).

Number of Trustees/Directors

The Trust Declaration provides that there shall be not less than five nor more than 15 trustees and, within these limits, the number of trustees may be increased or decreased from time to time by the trustees.

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 15.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Election of Trustees/Directors

The Trust Declaration provides that the board of trustees is divided into three classes, with each class serving for a three year term. The election of each trustee of the class standing for election requires the affirmative vote of the holders of not less than a majority of the shares then outstanding and entitled to vote. The Trust Declaration does not provide for cumulative voting in the election of trustees.

The New BRT Charter provides for a staggered board of directors consisting of three classes. Directors of each class are elected for three-year terms and until their successors are duly elected and qualify. Each year one class of New BRT directors will be elected by the New BRT shareholders.

The term of the Old BRT Class I trustees, Class II trustees and Class III trustees will continue following the Conversion as the Class I directors, Class II directors, and Class III directors of New BRT, respectively, until the annual meeting of stockholders held in 2018, 2019 and 2020, respectively, and until their successors are elected and qualify. At each annual meeting of the shareholders of the Company, the successors to the class of directors whose term expires at that meeting shall be elected to hold office for a term continuing until the annual meeting of shareholders held in the third year following the year of their election and until their successors are elected and qualify.

Under the New BRT Charter, subject to the rights, if any, of holders of any class or series of New BRT preferred stock to elect or remove one or more additional directors, the holders of New BRT common stock voting are entitled to elect all of the directors of New BRT. Holders of New BRT common stock will have no right to cumulative voting in the election of directors. Subject to the approval of the Old BRT shareholders of the Majority Voting in Election of Directors Proposal, New BRT directors will be elected by a majority of the votes cast by holders of New BRT common stock in an uncontested election of directors (and by a plurality of all the votes cast in a contested election).

If the Majority Voting in Election of Directors Proposal is not approved by Old BRT shareholders at the Annual Meeting, the New BRT Bylaws will be revised to provide that a New BRT director will be elected by holders of a majority of the votes entitled to be cast in the election of such director.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Appraisal Rights

Neither Massachusetts's law nor the Trust Declaration provide for appraisal rights for shareholders.

The New BRT Charter provides that holders of New BRT stock or any other security of New BRT will not be entitled to exercise any rights of an objecting shareholder provided for under the MGCL unless New BRT's board of directors determines that such rights apply, with respect to all or any classes or series of New BRT stock, to one or more transactions in connection with which holders of such shares would otherwise be entitled to exercise such rights and occurring after the date of such determination by New BRT's board of directors.

Dividends and Other Distributions

The Trust Declaration provides that subject to the rights of the holders of shares of preferred stock, the trustees may from time to time declare and pay to the holders of shares of beneficial interest, in proportion to their respective ownership of shares of beneficial interest, out of the earnings, profits, surplus, capital or assets in the hands of the trustees, such dividends or other distributions as they see fit. The declaration and payment of such dividends or other distributions and the determination of earnings, profits, surplus and capital available for dividends and other purposes shall lie wholly in the discretion of the trustees. In the event the Old BRT is operated as a REIT, the trustees are to endeavor from time to time to declare and pay such dividends and distributions as shall be necessary for Old BRT to qualify as a REIT. Any or all such dividends or other distributions may be made, in whole or in part, in cash, property or other assets of Old BRT, or in senior or subordinated secured or unsecured evidences of indebtedness of Old BRT, as the trustees may in their sole discretion from time to time determine. The trustees may also distribute to Old BRT shareholders, in proportion to their respective ownership of shares, additional shares in such manner and on such terms as they may deem proper. The trustees, except as otherwise required by the Trust Declaration, may retain from the net profits such amounts as they may deem necessary to pay the debts and expenses of Old BRT, to meet

Under the MGCL, no dividend or distribution may be made if, after giving effect to the dividend or other distribution: (i) the corporation would not be able to pay its debts as they become due in the usual course of business or (ii) the corporation's total assets would be less than the sum of its total liabilities plus, unless the charter permits otherwise, any amount required to be paid to holders of preferred stock in the event of a liquidation of the corporation. Notwithstanding clause (ii) in the immediately preceding sentence, a corporation may make a dividend or other distribution from: (a) the net earnings of the corporation for the fiscal year in which the dividend or other distribution is made; (b) the net earnings of the corporation for the preceding fiscal year; or (c) the sum of the net earnings of the corporation for the preceding eight fiscal quarters.

The New BRT Charter provides that, subject to the provisions of any class or any series of New BRT stock then outstanding, the board of directors from time to time may authorize New BRT to declare and pay to shareholders such dividends or other distributions in cash

obligations of the Old BRT, to establish reserves, or as they may deem desirable to use in the conduct of Old BRT's affairs or to retain for future requirements or extensions of the business.

or other assets of New BRT or in securities of New BRT, including in shares of one class or series of New BRT's stock payable to holders of shares of another class or series of New BRT stock, or from any other source as the board of directors in its sole and absolute discretion shall determine.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Exclusive Forum for Certain Litigation

The Trust Declaration and the Old Bylaws do not address the issue of the forum in which derivative and others claims involving Old BRT, its officers, or trustees or employees, must be brought.

The New BRT Bylaws provide that, unless New BRT otherwise consents in writing, (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 of New BRT 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**Old BRT****New BRT**Related Party Transactions

The Trust Declaration provides that the purchase of real property from an affiliate of Old BRT may only be effected with an appraisal from a non-affiliate of Old BRT.

The Old BRT Trust Declaration prohibits Old BRT from engaging in certain transactions with, among others, trustees, officers, employees of Old BRT and their affiliates unless (i) such transaction has been approved after full disclosure of such affiliation, by a majority of the trustees, including a majority of the trustees unaffiliated with a party to the transaction, (ii) the trustees approving the transaction have determined that such transaction is fair and reasonable to the shareholders and is on terms no less favorable to Old BRT than terms available for a comparable transaction with others that are not so affiliated, and (iii) among other things, if such transaction relates to the acquisition by Old BRT of real and certain other property, it is to be effected at prices not exceeding the fair value thereof as determined by an independent appraisal.

The Trust Declaration further provides that the trustees, officers, employees or agents of Old BRT may have interests in and be engaged in activities similar to those of Old BRT, and such persons are not obligated to present to Old BRT any investment opportunity which comes to such person in any capacity other than solely as trustee, officer, employee or agent of Old BRT, even if such opportunity is of a character which, if presented to Old BRT, could be taken by Old BRT; *provided, however*, that no such person may compete with Old BRT in (i) any transaction in which Old BRT is engaged or (ii) any proposed transaction which has been presented to the trustees in writing for their consideration and which has not been rejected by the vote of a majority of the trustees disinterested in such a proposed transaction.

The MGCL provides that a transaction between a corporation and any of its directors (including an entity in which the director is a director of such entity or has a material financial interest) is not void or voidable solely because of the common directorship or interest, the presence of the director at the meeting of the board which approves the transaction, or the counting of the vote of the interested director for the approval of the transaction if: (1) the fact of the relationship or interest is disclosed or known to: (i) the board of directors, and the board approves the transaction by the affirmative vote of a majority of disinterested directors, even if the disinterested directors constitute less than a quorum; or (ii) the shareholders entitled to vote, and the transaction is approved by a majority of the votes cast by the shareholders entitled to vote other than the votes of shares owned by the interested director or entity; or (2) the transaction is fair and reasonable to the corporation. Consistent with the requirements of the NYSE, New BRT's audit committee charter will provide that the audit committee will review and approve, if appropriate, all related party transactions involving, among others, New BRT and any affiliate.

TABLE OF CONTENTS

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

*The New BRT Charter and the New BRT Bylaws and Maryland law contain provisions that may delay, defer or prevent a change in control or other transaction that might involve a premium price for shares of New BRT stock or otherwise be in the best interest of New BRT s shareholders.*

**Old BRT**

**New BRT**

Removal of Directors

The Trust Declaration provides that a trustee may be removed either (a) for cause, as determined in the reasonable judgment of two-thirds of the remaining trustees or (b) with or without cause, at any meeting of shareholders by the affirmative vote of the holders of at least a majority of the shares entitled to vote present in person or by proxy at such meeting

The MGCL provides that the shareholders may remove any director of a corporation, with or without cause, by the affirmative vote of a majority of all votes entitled to be cast generally for the election of directors, unless the charter provides otherwise or the corporation elects to be subject to certain provisions of the MGCL, as discussed below. Under the MGCL, unless the charter provides otherwise, if the shareholders of any class or series are entitled separately to elect one or more directors, such a director may not be removed without cause except by the affirmative vote of a majority of all the votes of that class or series. Subject to the approval of the New BRT Director Removal Proposal by the Old BRT shareholders at the Annual Meeting, the New BRT Charter provides that, subject to the rights of holders of shares of one or more classes or series of New BRT preferred stock to elect or remove one or more directors, any director may be removed as a director at any time but only for cause and then only by the affirmative vote of shareholders entitled to cast at least two-thirds of all the votes entitled to be cast generally in the election of directors. Cause means 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.

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. Though the Trust Declaration also permits the removal of trustees for cause, as determined in the reasonable judgment of two-thirds of the remaining trustees, the removal of directors by the board of directors of a Maryland corporation, regardless of cause, is not permitted under the MGCL-accordingly, no comparable provision will be included in the New BRT Charter.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Board Vacancies

The Trust Declaration provides that newly created trusteeships resulting from any increase in the number of authorized trustees or vacancies on the board of trustees shall be filled by a majority vote of the trustees then in office, although less than a quorum, and the trustees so chosen shall hold office for a term expiring at the annual meeting of shareholders at which the term of the class to which they have been elected expires.

New BRT will be subject to a provision of Title 3, Subtitle 8 of the MGCL that provides that, except as may be provided by the New BRT board of directors in setting the terms of any class or series of preferred stock, any vacancy on the board of directors may be filled only by a majority of the remaining directors, even if the remaining directors do not constitute a quorum, and any individual elected to fill a vacancy as a director will serve for the remainder of the full term of the class in which the vacancy occurred and until a successor is elected and qualified.

Right to Call Special Shareholder Meetings

The Trust Declaration provides that (i) special meetings of shareholders may be called by the President or a majority of the trustees, and shall be called upon the written request shareholders holding not less than 20% of the outstanding shares having voting rights, such request to specify the purpose(s) for which such meeting is to be called, and (ii) such meetings may be held within or without of Massachusetts on such date and time as the trustees determine. Old BRT's bylaws provide that the date, time and location of the annual and special shareholder meetings are to be determined by the trustees.

Subject to the approval of the Old BRT shareholders of the Special Shareholder Meeting Proposal, the New BRT Bylaws provide that: (a) New BRT's chairman, chief executive officer, president or New BRT's board of directors may call special meetings of shareholders; and (b) 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 written request of the shareholders entitled to cast a majority of all the votes entitled to be cast on such matter at the meeting. See — *Advance Notice of Director Nominations and Shareholder Proposals*.

If the Special Shareholder Meeting Proposal is not approved by the Old BRT shareholders at the Annual Meeting, the New BRT Bylaws will be revised to provide that special meetings of shareholders may be called by the President or a majority of the

directors, 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.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Advance Notice of Director Nominations and Shareholder Proposals

The Trust Declaration and the Old Bylaws do not authorize shareholders of Old BRT to present shareholder proposals or trustee nominations at an annual meeting of shareholders. Massachusetts law does not expressly authorize shareholders to present proposals or nominate trustees at an annual meeting of shareholders. Therefore, no particular advance notice requirements apply in respect of proposals by shareholders or trustee nominations that a shareholder desires to present at an annual meeting of shareholders. See *Shareholder Proposals*.

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 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

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 director, including information about the economic interests of the shareholder, its affiliates and any proposed nominee in New BRT.

TABLE OF CONTENTS

**Old BRT**

**New BRT**

Ownership and Transfer Restrictions

The Trust Declaration provides that in the event Old BRT is being operated as a REIT, and if in the good faith opinion of the trustees, direct or indirect ownership of equity securities of Old BRT has or may become concentrated to an extent which is contrary to the requirements of the provisions of the Code relating to the qualification as a REIT, the trustees have the power, in their sole discretion, to: (a) refuse to sell, transfer or deliver shares to any person or entity, or (b) to call for redemption from the person or entity whose most recent acquisition or purchase of shares resulted in a concentration of shares which is believed to be contrary to the Code requirements relating to REIT qualification, a number of shares held by such person or entity sufficient in the opinion of the trustees to bring the ownership of shares in conformity with such REIT requirements. The redemption price equal to the fair market value of the shares as reflected in the closing bid price for the shares as of the date fixed for redemption.

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 the outstanding New BRT stock. The New BRT Charter contains additional restrictions on ownership and transfer of New BRT common stock intended, among other things, to assist New BRT in qualifying as a REIT under the Code. See *Description of New BRT Stock—Restrictions on Ownership and Transfer*.

If the New BRT REIT Restrictions Proposal is not approved, the Conversion will not be implemented.



TABLE OF CONTENTS

**Old BRT**

**New BRT**

Change in Control

Business Combinations. Pursuant to the Old BRT Trust Declaration, a business combination (as described), with or into a related person (as described) must be approved by trustees not affiliated with the related person and the board of trustees must receive a written opinion from an investment banking firm of national reputation that the business combination is fair to the shareholders (other than the shareholders of the related person). Business combinations include the (i) merger of Old BRT or its subsidiary with or into a related person or the related person's merger with or into Old BRT or its subsidiary or (ii) any sale, lease, exchange, transfer or other disposition (a Disposition ) of all or substantially all of the assets of Old BRT or a subsidiary thereof to a related person or a Disposition from the related person to Old BRT. A related person is any person or entity, which together with its affiliates or associates beneficially owns in the aggregate more than 50% of the outstanding voting stock of Old BRT and any affiliate or associate of such person.

Business Combinations. See *Certain Provisions of Maryland Law and of the New BRT Charter and New BRT Bylaws—Business Combinations* for a description of the provisions of MGCL applicable to business combinations. 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 intends to elect, by resolution of New BRT's board of directors, 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).

The business combination provisions of the MGCL may discourage others from trying to acquire control of New BRT and increase the difficulty of consummating any offer to acquire control of New BRT.

Control Share Acquisitions. See *Certain Provisions of Maryland Law and of the New BRT Charter and New BRT Bylaws—Control Share Acquisitions* for a description of the control share acquisition provisions of the MGCL. As permitted by the MGCL, the New BRT Bylaws, attached hereto as Annex D, contain a provision opting out of the control acquisition provisions of the MGCL. 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 a 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 for certain corporate governance matters.

The New BRT Charter and the New BRT Bylaws provide, whether by electing to be subject to the statute or by unrelated provisions, all of the elective provisions of the statute will apply to New BRT upon completion of the Conversion.

TABLE OF CONTENTS

**LIMITATION OF LIABILITY AND INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Maryland law permits a Maryland corporation to include in its charter a provision eliminating the liability of its directors and officers to the corporation 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. The New BRT Charter contains such a provision that eliminates such liability to the maximum extent permitted by Maryland law.

The MGCL requires a Maryland corporation (unless the charter provides otherwise, which the New BRT Charter does not), to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made a party by reason of his or her service in that capacity. The MGCL permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

A corporation may not indemnify a director or officer in a suit by or on behalf of the corporation in which the director or officer was adjudged liable to the corporation or in a suit in which the director or officer was adjudged liable on the basis that personal benefit was improperly received. A court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by or on behalf of the corporation, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits a corporation to advance reasonable expenses to a director or officer upon receipt of:

- a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation; and
- a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

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.

TABLE OF CONTENTS

New BRT intends to enter into customary indemnification agreements with New BRT's directors and executive officers that will require New BRT, among other things, to indemnify New BRT's directors and executive officers against certain liabilities that may arise by reason of their status as directors or officers to the maximum extent permitted by Maryland law and provide for the advancement of expenses in connection therewith.

At the Effective Time, New BRT intends to maintain directors' and officers' liability insurance which will indemnify New BRT's directors and officers against damages (including legal fees and expenses), arising out of certain kinds of claims which might be made against them based on acts and things done (or not done) by them while acting in their capacity as directors and officers.

Insofar as indemnification for liabilities arising under the Securities Act may be provided to directors, officers or persons controlling New BRT pursuant to the foregoing provisions, in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

## TABLE OF CONTENTS

### **MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS**

The following is a summary of the material U.S. federal income tax considerations relating to the Conversion, and to the ownership and disposition of New BRT common stock, as applicable. This discussion is for your general information only. This summary is not tax advice. The tax treatment of a holder will vary depending upon the holder's particular situation, and this summary addresses only holders that hold Old Shares and shares of New BRT common stock, as applicable, as capital assets within the meaning of Section 1221 of the Code and does not deal with all aspects of taxation that may be relevant to particular holders in light of their personal investment or tax circumstances. This summary also does not deal with all aspects of taxation that may be relevant to certain types of holders to which special provisions of the U.S. federal income tax laws apply, including:

- dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting;
- financial institutions;
- insurance companies;
- REITs;
- regulated investment companies;
- pension plans or other tax exempt organizations;
- partnerships or entities treated as partnerships for U.S. federal income tax purposes and investors therein, S corporations or other pass-through entities;
- persons liable for the alternative minimum tax;
- persons that hold Old Shares or shares of New BRT common stock, as applicable, that are a hedge, that are hedged against interest rate or currency risks or that are part of a straddle or conversion transaction;
- persons that purchase or sell Old Shares or New BRT common stock, as applicable, as part of a wash sale for tax purposes; and
- U.S. shareholders whose functional currency is not the U.S. dollar.

No ruling on the U.S. federal, state, or local tax considerations relevant to the Conversion, our operation or to the purchase, ownership or disposition of New BRT common stock, has been requested from the IRS or other tax authority. No assurance can be given that the IRS would not assert, or that a court would not sustain a position contrary to any of the tax consequences described below.

This summary is based on the Code existing temporary, proposed and final Treasury regulations promulgated thereunder, current administrative interpretations, practices and rulings, and judicial decisions, all as currently in effect and all of which are subject to differing interpretations. In addition, no assurance can be given that future legislative, judicial, or administrative actions or decisions, which may be retroactive in effect, will not affect the accuracy of any statements in this prospectus with respect to the transactions entered into or contemplated prior to the effective date of such changes. No assurance can be given that the Internal Revenue Service (the IRS) would not assert, or that a court of competent jurisdiction would not sustain, a position contrary to any tax consequences described below.

If a partnership or other entity treated as a partnership for U.S. federal income tax purposes holds Old Shares or shares of New BRT common stock, as applicable, the U.S. federal income tax treatment of a partner will generally depend on the status of the partner and the tax treatment of the partnership. A partner in a partnership holding Old Shares or shares of New BRT common stock, as applicable, should consult such partner's tax advisor with regard to the U.S. federal income tax treatment of an investment in the Old Shares or shares of New BRT common stock, as applicable.

**We urge you to consult with your own tax advisors regarding the U.S. federal, state, local and foreign tax consequences to you of the Conversion, owning and selling the Old Shares or shares of New BRT common stock, as applicable, the tax treatment of a REIT, and potential changes in applicable tax laws.**



## TABLE OF CONTENTS

As used in this section, the term "U.S. shareholder" means a holder of Old Shares or New BRT common stock, as applicable, who, for U.S. federal income tax purposes, is:

- a citizen or resident of the United States;
- a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States, any state therein or the District of Columbia;
- an estate whose income is subject to U.S. federal income taxation regardless of the income's source; or a trust (i) if a United States court can exercise primary supervision over the trust's administration and one or more United States persons have authority to control all substantial decisions of the trust or (ii) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

Nonresident alien individuals, foreign corporations, foreign partnerships and estates or trusts that in either case are not subject to U.S. federal income tax on a net income basis, who own Old Shares or shares of New BRT common stock, as applicable, are referred to in this section as "non-U.S. shareholders."

### **U.S. Federal Income Tax Consequences of the Conversion**

The Conversion is intended to qualify as reorganization under Section 368(a) of the Code, and the federal income tax consequences summarized below assume that the Conversion will so qualify. We anticipate that prior to the Effective Time, our tax counsel, Troutman Sanders LLP, will deliver an opinion that the Conversion will be treated for U.S. federal income tax purposes as a reorganization under Section 368(a) of the Code, though the delivery of such opinion is not a condition to the completion of the Conversion. The opinion of our counsel is based on the U.S. federal income tax law in effect as of the date issued, relies on certain representations of our tax management and assumes, among other things, that the Conversion will be consummated in accordance with the applicable documents and as described herein. An opinion of counsel is not binding on the IRS or any court.

Neither New BRT nor Old BRT will recognize any gain or loss as a result of the Conversion. Except as described below with respect to non-U.S. shareholders that own or have owned in excess of 5% of the Old Shares, shareholders will not recognize any gain or loss upon the exchange of Old Shares for shares of New BRT common stock pursuant to the Conversion. The initial tax basis of the shares of New BRT common stock received by a shareholder pursuant to the Conversion will be the same as such shareholder's adjusted tax basis in the Old Shares being exchanged pursuant to the Conversion. The holding period of the shares of New BRT common stock received by a shareholder pursuant to the Conversion will include such shareholder's holding period with respect to the Old Shares being exchanged pursuant to the Conversion.

If, after the Conversion, we are a "domestically controlled qualified investment entity" within the meaning of the Code, then in the case of non-U.S. shareholders that own or have owned in excess of 10% of the outstanding Old Shares, the Conversion may result in gain recognition as a result of the Treasury regulations governing dispositions of investments in U.S. real property. A "domestically controlled qualified investment entity" means any qualified investment entity (including a real estate investment trust) in which at all times during an applicable testing period less than 50% in value of such entity's stock was held directly or indirectly by foreign persons. If you are a non-U.S. shareholder that beneficially owns or has owned (within the five-year period ending on the date Old Shares are exchanged for shares of New BRT common stock, or the period during which you held Old Shares, if shorter) in excess of 10% of the outstanding Old Shares, we urge you to consult with your own tax advisor to determine the tax consequences to you resulting from the exchange of Old Shares for New BRT common stock pursuant to the Conversion.

### **Taxation of New BRT as a Real Estate Investment Trust**



In the opinion of Troutman Sanders LLP, New BRT's proposed organization and method of operation should enable New BRT to meet the requirements for qualification and taxation as a real estate investment trust under the Code commencing with the taxable year in which the Conversion is effective and for subsequent taxable years. Investors should be aware, however, that opinions of counsel are not binding upon the IRS or any court.

In providing its opinion, Troutman Sanders LLP is relying, without independent investigation, as to certain factual matters upon the statements and representations contained in a certificate provided to Troutman Sanders LLP with respect to New BRT.

TABLE OF CONTENTS

New BRT's qualification as a real estate investment trust under the Code will depend upon the satisfaction by Old BRT for the period ending immediately prior to the Conversion, and New BRT, thereafter, of requirements of the Code relating to qualification for real estate investment trust status. Some of these requirements depend upon actual operating results, distribution levels, diversity of stock ownership, asset composition, source of income and record keeping. Accordingly, while New BRT intends to qualify to be taxed as a REIT for U.S. federal income tax purposes, the actual results of New BRT for any particular year (and combined with Old BRT for the calendar year in which the Conversion is effective), might not satisfy these requirements. Neither Troutman Sanders LLP nor any other law firm will monitor the compliance of New BRT with the requirements for REIT qualification on an ongoing basis.

The sections of the Code applicable to New BRT are highly technical and complex. The following discussion summarizes material aspects of these sections of the Code.

As a REIT, New BRT generally will not have to pay U.S. federal corporate income taxes on New BRT's net income that New BRT currently distributes to its shareholders. This treatment substantially eliminates the "double taxation" at the corporate and shareholder levels that generally results from investment in a regular corporation. New BRT's dividends, if any, however, generally will not be eligible for (i) the reduced rates of tax applicable to dividends received by noncorporate holders and (ii) the corporate dividends-received deduction.

However, New BRT will have to pay U.S. federal income tax as follows:

- New BRT will have to pay tax at regular corporate rates on any REIT taxable income, including net capital gains, that we do not distribute to New BRT shareholders during, or within a specified time after, the calendar year in which the income is earned, to the extent we cannot otherwise offset such income with our tax NOL carryforward.
- Under certain circumstances, New BRT may have to pay the alternative minimum tax on New BRT's items of tax preference.
  - If New BRT has (a) net income from the sale or other disposition of "foreclosure property," as defined in the Code, which is held primarily for sale to customers in the ordinary course of business or (b) other non-qualifying income from foreclosure property, New BRT will have to pay tax at the highest corporate rate on that income.
  - If New BRT has net income from "prohibited transactions," as defined in the Code, New BRT will have to pay a 100% tax on that income. Prohibited transactions are, in general, certain sales or other dispositions of property, other than foreclosure property, held primarily for sale to customers in the ordinary course of business.
  - If New BRT should fail to satisfy the 75% gross income test or the 95% gross income test, as discussed below under "*Requirements for Qualification—Income Tests*," but has nonetheless maintained New BRT's qualification as a real estate investment trust because it has satisfied some other requirements, New BRT will have to pay a 100% tax on an amount equal to (a) the gross income attributable to the greater of (i) 75% of New BRT's gross income over the amount of gross income that is qualifying income for purposes of the 75% test, and (ii) 95% of New BRT's gross income over the amount of gross income that is qualifying income for purposes of the 95% test, multiplied by (b) a fraction intended to reflect New BRT's profitability.
  - If after consideration of New BRT's NOL carryforwards New BRT should fail to distribute during each calendar year at least the sum of (1) 85% of New BRT's real estate investment trust ordinary income for that year, (2) 95% of New BRT's real estate investment trust capital gain net income for that year and (3) any undistributed taxable income from prior periods, New BRT would have to pay a 4% excise tax on the excess of that required distribution over the sum of the amounts actually distributed and retained amounts on which income tax is paid at the corporate level.

If New BRT acquires any asset from a C corporation in certain transactions in which New BRT must adopt the basis of the asset or any other property in the hands of the C corporation as the basis of the asset in the hands of New BRT, and New BRT recognizes gain on the disposition of that asset during the ten year period beginning on the date on which New BRT acquired that asset (five years if the IRS revises its regulations as has been indicated on November 9, 2016 by an IRS spokesman to be

TABLE OF CONTENTS

forthcoming), then New BRT will have to pay tax at the highest regular corporate rate on the lesser of the gain recognized at the time of sale or disposition or the built-in gain that would have been recognized if New BRT had sold the asset at the time of acquisition. A C corporation generally refers to a corporation that has to pay full corporate-level tax.

- If New BRT derives excess inclusion income from a residual interest in a real estate mortgage investment conduit, or REMIC, or certain interests in a taxable mortgage pool, or TMP, New BRT could be subject to corporate-level U.S. federal income tax at a 35% rate to the extent that such income is allocable to certain types of tax-exempt shareholders that are not subject to unrelated business income tax, such as government entities.
- If New BRT receives non-arm's-length income from a TRS (as defined under *—Requirements for Qualification—Asset Tests*), or as a result of services provided by a TRS to tenants of New BRT, New BRT will be subject to a 100% tax on the amount of New BRT's non-arm's-length income.
- If New BRT fails to satisfy a REIT asset test, as described below, due to reasonable cause and New BRT nonetheless maintains its REIT qualification because of specified cure provisions, New BRT will generally be required to pay a tax equal to the greater of \$50,000 or the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets that caused New BRT to fail such test.
- If New BRT fails to satisfy any provision of the Code that would result in New BRT's failure to qualify as a REIT (other than a violation of the REIT gross income tests or a violation of the asset tests described below) and the violation is due to reasonable cause, New BRT may retain its REIT qualification but will be required to pay a penalty of \$50,000 for each such failure.
- New BRT may be required to pay monetary penalties to the IRS in certain circumstances, including if New BRT fails to meet recordkeeping requirements intended to monitor New BRT's compliance with votes relating to the composition of our shareholders.

***Requirements for Qualification***

*Organizational Requirements.* The Code defines a REIT as a corporation, trust or association:

- that is managed by one or more trustees or directors;
- the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;
- that would otherwise be taxable as a domestic corporation, but for the sections of the Code defining and providing special rules for REITs;
- that is neither a financial institution nor an insurance company to which certain provisions of the Code apply; except for the first taxable year in which an election is made to treat the corporation, trust or association as a real estate investment trust, the beneficial ownership of which is held by 100 or more persons;
- during the last half of each taxable year (other than the first taxable year in which an election is made to treat the corporation, trust or association as a real estate investment trust), not more than 50% in value of the outstanding stock of which is owned, directly or constructively, by five or fewer individuals, as defined in the Code to include certain entities (the not closely held requirement);
- that makes an election to be taxable as a REIT for the current taxable year, or has made this election for a previous taxable year, which election has not been revoked or terminated, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to maintain qualification as a REIT; and
- that uses a calendar year for U.S. federal income tax purposes.

The Code provides that the conditions described in the first through fourth such bullet points above must be met during the entire taxable year and that the condition described in the fifth bullet point above must be met

TABLE OF CONTENTS

(other than the first taxable year in which an election is made to treat the corporation, trust or association) during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months.

New BRT expects to satisfy the conditions described in the first through sixth bullet points of the second preceding paragraph for the taxable year in which the Conversion takes place and subsequent taxable years. In addition, New BRT's Charter will provide for restrictions regarding the ownership and transfer of the shares of New BRT common stock. These restrictions are intended to, among other things, assist New BRT in satisfying the share ownership requirements described in the fifth and sixth bullet points of the preceding paragraph. The ownership and transfer restrictions pertaining to the shares of New BRT common stock are described in this proxy statement/prospectus under the heading *Description of New BRT Stock—Restrictions on Ownership and Transfer*.

Old BRT made its election to be taxable as a REIT in 1972 and that election has not been revoked or terminated. New BRT will succeed to Old BRT's REIT election at the effective time of the Conversion. Old BRT and New BRT have adopted December 31 as their year-end, thereby satisfying the last bullet. For purposes of applying the foregoing conditions during the calendar year in which the Conversion takes place, New BRT will be treated as the continuation of Old BRT.

*Disregarded Entity Subsidiaries.* A corporation that is a qualified REIT subsidiary, or QRS, will not be treated as a separate corporation, and all assets, liabilities and items of income, deduction and credit of a QRS will be treated as assets, liabilities and items of these kinds of New BRT, unless New BRT makes an election to treat such corporation as a taxable REIT subsidiary, or TRS. Thus, in applying the requirements described in this section, New BRT's QRSs (if any) will be ignored, and all assets, liabilities and items of income, deduction and credit of these subsidiaries will be treated as assets, liabilities and items of these kinds of New BRT.

*Investments in Partnerships.* Following the Conversion, we expect that all of our investments will be by New BRT directly or indirectly in the same manner as they were held by Old BRT. In addition, New BRT may hold certain of its investments indirectly through subsidiary partnerships and limited liability companies which we expect will be treated as partnerships or disregarded entities for U.S. federal income tax purposes. In general, entities that are classified as partnerships or disregarded entities for U.S. federal income tax purposes are pass-through entities which are not required to pay entity-level U.S. federal income tax. If a REIT is a partner in a partnership, Treasury regulations provide that the REIT will be deemed to own its proportionate share of the assets of the partnership and will be deemed to be entitled to the income of the partnership attributable to that proportionate share. In addition, the character of the assets and gross income of the partnership will retain the same character in the hands of the real estate investment trust for purposes of the rules of the Code defining real estate investment trusts, including satisfying the gross income tests and the asset tests. Thus, New BRT's proportionate share of the assets, liabilities and items of income of any partnership in which New BRT is a partner, will be treated as assets, liabilities and items of income of New BRT for purposes of applying the requirements described in this section. Thus, actions taken by partnerships in which New BRT owns an interest, either directly or through one or more tiers of partnerships or disregarded entity subsidiaries, can affect New BRT's ability to satisfy the real estate investment trust income and asset tests and the determination of whether New BRT has net income from prohibited transactions. See the fourth bullet point under the heading *Taxation of New BRT as a Real Estate Investment Trust* above for a brief description of prohibited transactions.

*Taxable Real Estate Investment Trust Subsidiaries.* A TRS is any corporation in which a REIT directly or indirectly owns stock, provided that the REIT and that corporation make a joint election to treat that corporation as a TRS. The election can be revoked at any time as long as the REIT and the TRS revoke such election jointly. In addition, if a TRS holds, directly or indirectly, more than 35% of the securities of any other corporation other than a REIT (by vote or by value), then that other corporation is also treated as a TRS. A corporation can be a TRS with respect to more than one real estate investment trust.

A TRS is subject to U.S. federal income tax as a C corporation at regular corporate rates and may also be subject to state and local taxation. Any dividends paid or deemed paid by any one of New BRT's TRSs will also be taxable; either (1) to New BRT to the extent the dividend is retained by New BRT, or (2) to New BRT's shareholders to the extent the dividends received from the TRS is paid to New BRT's shareholders. New BRT may hold more than 10% of the stock of a TRS without jeopardizing its qualification as a real estate investment trust under the Code notwithstanding the rule described below under —*Asset Tests* that generally precludes

TABLE OF CONTENTS

ownership of more than 10% of any issuer's securities. However, as noted below, in order for New BRT to qualify as a REIT under the Code, the securities of all of the TRSs in which New BRT has invested either directly or indirectly may not represent more than 25% of the total value of New BRT's assets (20% for taxable years beginning after December 31, 2017). We expect that the aggregate value of all of New BRT's interests in TRSs will represent less than 25% of the total value of New BRT's assets (less than 20% for taxable years beginning after December 31, 2017); however, we cannot assure you that New BRT will always satisfy this requirement. Other than certain activities related to operating or managing a lodging or health care facility, a TRS may generally engage in any business including the provision of customary or non-customary services to tenants of the parent REIT.

*Income Tests.* In order to maintain New BRT's qualification as a REIT, New BRT annually must satisfy two gross income requirements.

First, New BRT must derive at least 75% of its gross income, excluding gross income from prohibited transactions, for each taxable year directly or indirectly from investments relating to real property or

- mortgages on real property or qualified temporary investment income (effective for taxable years beginning after December 31, 2015, excluding gain from the sale of a debt instrument issued by a publicly offered REIT to the extent not secured by real property or an interest in real property).

Second, at least 95% of New BRT's gross income, excluding gross income from prohibited transactions, for each taxable year must be derived from real property investments as described in the preceding bullet point,

- dividends, interest and gain from the sale or disposition of stock or securities, or from any combination of these types of sources. Effective for taxable years beginning after December 31, 2015, gain from the sale of real estate assets includes from the sale of a debt instrument issued by a publicly offered REIT even if not secured by real property or an interest in real property).

Rents that New BRT receives will qualify as rents from real property in satisfying the gross income requirements for a New BRT described above only if the rents satisfy several conditions.

First, the amount of rent must not be based in whole or in part on the income or profits of any person.

- However, an amount received or accrued generally will not be excluded from rents from real property solely because the rent is based on a fixed percentage or percentages of receipts or sales.

Second, the Code provides that rents received from a tenant will not qualify as rents from real property in satisfying the gross income tests if New BRT, directly or under the applicable attribution rules, owns a 10%

- or greater interest in that tenant; except that rents received from a TRS under certain circumstances qualify as rents from real property even if New BRT owns more than a 10% interest in the subsidiary. We refer to a tenant in which New BRT owns a 10% or greater interest as a related party tenant.

Third, if rent attributable to personal property leased in connection with a lease of real property is greater than 15% of the total rent received under the lease, then the portion of rent attributable to the personal property will not qualify as rents from real property.

- Finally, for rents received to qualify as rents from real property, except as described below, New BRT generally must not operate or manage the property or furnish or render services to the tenants of the property, other than through an independent contractor from whom New BRT derives no revenue or through a TRS.

However, New BRT may directly perform certain services that landlords usually or customarily render when renting space for occupancy only or that are not considered rendered to the occupant of the property.

New BRT may directly perform services for some of its tenants. New BRT does not believe that the provision of these services will cause its gross income attributable to these tenants to fail to be treated as rents from real property. If New BRT were to provide services to a tenant of a property of New BRT other than those services landlords usually or customarily provide to tenants of properties of a similar class in the same geographic market when renting space for occupancy only, amounts received or accrued by New BRT for any of these services will not be treated as rents from real property for purposes of the real estate investment trust gross income tests. However, the amounts received or accrued for these services will not cause other amounts received with respect to the property to fail to be treated as

rents from real property unless the amounts treated as

64



TABLE OF CONTENTS

received in respect of the service (valued at no less than 150% of the direct cost of providing such service), together with amounts received for certain management services, exceed 1% of all amounts received or accrued by New BRT during the taxable year with respect to the property. If the sum of the amounts received in respect of the services to tenants and management services described in the preceding sentence exceeds the 1% threshold, then all amounts received or accrued by New BRT with respect to the property will not qualify as rents from real property, even if New BRT provides the impermissible service to some, but not all, of the tenants of the property.

The term *interest* generally does not include any amount received or accrued, directly or indirectly, if the determination of that amount depends in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term *interest* solely because the amount of the interest is based on a fixed percentage or percentages of receipts or sales.

From time to time, New BRT may enter into hedging transactions with respect to one or more of New BRT's assets or liabilities. New BRT's hedging activities may include entering into interest rate swaps, caps, and floors, options to purchase these items, and futures and forward contracts. Except to the extent provided by Treasury regulations, any income New BRT derives from a hedging transaction that is clearly identified as such as specified in the Code, including gain from the sale or disposition of such a hedging transaction, will not constitute gross income for purposes of the 75% or 95% gross income tests, and therefore will be excluded for purposes of these tests, but only to the extent that the transaction hedges indebtedness incurred or to be incurred by us to acquire or carry real estate assets, including mortgage loans. Effective for taxable years beginning after December 31, 2015, if New BRT (or prior to Conversion, Old BRT) entered into a qualifying hedging transaction described above (an *Original Hedge*), and a portion of the hedged indebtedness is extinguished or the related property is disposed of and in connection with such extinguishment or disposition we enter into a new clearly identified hedging transaction that would counteract the Original hedging transaction (a *Counteracting Hedge*), income from the Original Hedge and income from the Counteracting Hedge (including gain from the disposition of the Original Hedge and the Counteracting Hedge) will not be treated as gross income for purposes of the 95% and 75% gross income tests. To the extent New BRT hedges for other purposes, the income from such transactions will likely be treated as non-qualifying income for purposes of both gross income tests. The term *hedging transaction*, as used above, generally means any transaction New BRT enters into in the normal course of its business primarily to manage risk of interest rate or price changes or currency fluctuations with respect to borrowings made or to be made, or ordinary obligations incurred or to be incurred, by New BRT. We anticipate that New BRT will structure any hedging transactions in a manner that does not jeopardize its status as a REIT.

If New BRT fails to satisfy one or both of the 75% or 95% gross income tests for any taxable year, New BRT may nevertheless qualify as a REIT for that year if New BRT satisfies the requirements of other provisions of the Code that allow relief from disqualification as a REIT. These relief provisions will generally be available if:

- New BRT's failure to meet the income tests was due to reasonable cause and not due to willful neglect; and
- New BRT files a schedule of each item of income in excess of the limitations described above in accordance with regulations to be prescribed by the IRS.

New BRT might not be entitled to the benefit of these relief provisions, however. Even if these relief provisions apply, New BRT would have to pay a tax on the excess income. The tax will be a 100% tax on an amount equal to (a) the gross income attributable to the greater of (i) 75% of New BRT's gross income over the amount of gross income that is qualifying income for purposes of the 75% test, and (ii) 95% of New BRT's gross income over the amount of gross income that is qualifying income for purposes of the 95% test, multiplied by (b) a fraction intended to reflect New BRT's profitability.

*Asset Tests.* New BRT, at the close of each quarter of its taxable year, must also satisfy four tests relating to the nature of its assets.

Edgar Filing: BRT REALTY TRUST - Form 424B3

- First, at least 75% of the value of New BRT's total assets must be represented by interests in real property, including leaseholds and options to acquire real property, interests in mortgages on real property, stock in other REITs, including (a) real estate assets held by New BRT's disregarded entity

TABLE OF CONTENTS

subsidiaries (if any), New BRT's allocable share of real estate assets held by partnerships in which New BRT owns an interest and stock issued by another REIT, (b) for a period of one year from the date of New BRT's receipt of proceeds of an offering of the shares of New BRT common stock or publicly offered debt with a term of at least five years, stock or debt instruments purchased with these proceeds and (c) cash, cash items and government securities.

- Second, not more than 25% of New BRT's total assets may be represented by securities other than those in the 75% asset class and of the investments included in the 25% asset class, the value of any one issuer's securities, other than equity securities issued by another real estate investment trust or securities issued by a TRS, owned by New BRT may not exceed 5% of the value of New BRT's total assets.
- Third, not more than 25% of New BRT's total assets may constitute securities issued by TRSs (20% for taxable years beginning after December 31, 2017).
- Fourth, New BRT may not own more than 10% of the vote or value of the outstanding securities of any one issuer, except for issuers that are REITs, disregarded entity subsidiaries or TRSs, or certain securities that qualify under a safe harbor provision of the Code (such as so-called straight-debt securities).
- Fifth, effective for taxable years beginning after December 31, 2015, not more than 25% of the value of New BRT's total assets may be represented by debt instruments issued by publicly offered REITs to the extent not secured by real property or interests in real property.

For purposes of the asset tests described in the second and fourth bullets above, the term securities does not include stock in another REIT, equity or debt securities of a qualified REIT subsidiary or TRS, or equity interests in a partnership.

Solely for the purposes of the 10% value test described above, the determination of New BRT's interest in the assets of any partnership or limited liability company in which New BRT owns an interest will be based on New BRT's proportionate interest in any securities issued by the partnership or limited liability company, excluding for this purpose certain securities described in the Code.

If the IRS successfully challenges the partnership status of any of the partnerships in which New BRT maintains a more than 10% vote or value interest, and the partnership is reclassified as a corporation or a publicly traded partnership taxable as a corporation, New BRT could lose its REIT status. In addition, in the case of such a successful challenge, New BRT could lose its REIT status if such recharacterization results in New BRT otherwise failing one of the asset tests described above.

For purposes of the 10% value test, the term securities does not include:

- Straight debt securities, which is defined as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the debt is not convertible, directly or indirectly, into stock, and (ii) the interest rate and interest payment dates are not contingent on profits, the borrower's discretion, or similar factors. Straight debt securities do not include any securities issued by a partnership or a corporation in which we or any controlled TRS (*i.e.*, a TRS in which New BRT owns directly or indirectly more than 50% of the voting power or value of the stock) hold non- straight debt securities that have an aggregate value of more than 1% of the issuer's outstanding securities. However, straight debt securities include debt subject to the following contingencies;
  - a contingency relating to the time of payment of interest or principal, as long as either (i) there is no change to the effective yield of the debt obligation, other than a change to the annual yield that does not exceed the greater of 0.25% or 5% of the annual yield, or (ii) neither the aggregate issue price nor the aggregate face amount of the issuer's debt obligations held by us exceeds \$1 million and no more than 12 months of unaccrued interest on the debt obligations can be required to be prepaid; and
  - a contingency relating to the time or amount of payment upon a default or prepayment of a debt obligation, as long as the contingency is consistent with customary commercial practice.

- Any loan to an individual or an estate.

TABLE OF CONTENTS

- Any section 467 rental agreement, other than an agreement with a related party tenant.
- Any obligation to pay rents from real property.
- Certain securities issued by governmental entities.
- Any security issued by a REIT.
- Any debt instrument of an entity treated as a partnership for U.S. federal income tax purposes to the extent of our interest as a partner in the partnership.
- Any debt instrument of an entity treated as a partnership for U.S. federal income tax purposes not described in the preceding bullet points if at least 75% of the partnership's gross income, excluding income from prohibited transactions, is qualifying income for purposes of the 75% gross income test described above in Income Tests.

New BRT will monitor the status of its assets for purposes of the various asset tests and will seek to manage our assets to comply at all times with such tests. There can be no assurance, however, that we will be successful in this effort. In this regard, to determine New BRT's compliance with these requirements, New BRT will need to estimate the value of the real estate securing our mortgage loans at various times. In addition, we will have to value our investment in our other assets to ensure compliance with the asset tests. Although New BRT will seek to be prudent in making these estimates, there can be no assurances that the IRS might not disagree with these determinations and assert that a different value is applicable, in which case New BRT might not satisfy the 75% and the other asset tests and would fail to qualify as a REIT. If New BRT fails to satisfy the asset tests at the end of a calendar quarter, New BRT will not lose its REIT qualification if:

- New BRT satisfied the asset tests at the end of the preceding calendar quarter; and
- the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of New BRT's assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets.

Certain relief provisions may be available to New BRT if it fails to satisfy the asset tests described above after a 30-day cure period. Under these provisions, New BRT will be deemed to have met the 5% and 10% REIT asset tests if the value of New BRT's nonqualifying assets (i) does not exceed the lesser of (a) 1% of the total value of New BRT's assets at the end of the applicable quarter and (b) \$10,000,000, and (ii) New BRT disposes of the nonqualifying assets within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury regulations to be issued. For violations due to reasonable cause and not willful neglect that are not described in the preceding sentence, New BRT may avoid disqualification as a REIT under any of the asset tests, after the 30-day cure period, by taking steps including (i) the disposition of the nonqualifying assets to meet the asset test within (a) six months after the last day of the quarter in which the failure to satisfy the asset tests is discovered or (b) the period of time prescribed by Treasury regulations to be issued, (ii) paying a tax equal to the greater of (a) \$50,000 or (b) the highest corporate tax rate multiplied by the net income generated by the nonqualifying assets, and (iii) disclosing certain information to the IRS.

*Annual Distribution Requirements.* New BRT, in order to qualify as a REIT, is required to distribute dividends, other than capital gain dividends, to New BRT's shareholders in an amount at least equal to (1) the sum of (a) 90% of New BRT's real estate investment trust taxable income, computed without regard to the dividends paid deduction and New BRT's net capital gain, and (b) 90% of New BRT's net after-tax income, if any, from foreclosure property minus (2) the sum of certain items of non-cash income.

In addition, if New BRT acquires an asset from a C corporation in a carryover basis transaction and disposes of such asset within ten years of acquiring the asset, New BRT may be required to distribute at least 90% of the after-tax built-in gain, if any, recognized on the disposition of the asset.

These distributions must be paid in the taxable year to which the distributions relate, or in the following taxable year if declared before New BRT timely files its tax return for the year to which the distributions relate



## TABLE OF CONTENTS

and if paid on or before the first regular dividend payment after the declaration. However, for U.S. federal income tax purposes, these distributions that are declared in October, November or December as of a record date in such month and actually paid in January of the following year will be treated as if the distributions were paid on December 31 of the year declared.

To the extent that New BRT does not distribute all of its net capital gain or distributes at least 90%, but less than 100%, of New BRT's REIT taxable income, as adjusted, New BRT will have to pay tax on the undistributed amounts at regular ordinary and capital gain corporate tax rates. Furthermore, if New BRT fails to distribute during each calendar year at least the sum of (a) 85% of New BRT's ordinary income for that year, (b) 95% of New BRT's capital gain net income for that year and (c) any undistributed taxable income from prior periods, New BRT would have to pay a 4% excise tax on the excess of the required distribution over the sum of the amounts actually distributed and retained amounts on which income tax is paid at the corporate level.

We anticipate that New BRT will satisfy the annual distribution requirements.

From time to time, New BRT may not have sufficient cash or other liquid assets to meet the 90% distribution requirement due to timing differences between (a) when New BRT actually receives income and when New BRT actually pays deductible expenses and (b) when New BRT includes the income and deducts the expenses in arriving at New BRT's taxable income. If timing differences of this kind occur, in order to meet the 90% distribution requirement, New BRT may find it necessary to arrange for short-term, or possibly long-term, borrowings or to pay dividends in the form of taxable stock dividends.

Under certain circumstances, New BRT may be able to rectify a failure to meet the distribution requirement for a year by paying deficiency dividends to shareholders in a later year, which may be included in New BRT's deduction for dividends paid for the earlier year. Thus, New BRT may be able to avoid being taxed on amounts distributed as deficiency dividends; however, New BRT will be required to pay interest based upon the amount of any deduction taken for deficiency dividends.

As of December 31, 2015, Old BRT has an NOL carryforward of \$69.2 million and Old BRT estimates that after giving effect to property sales completed from January 1, 2016 through November 30, 2016, the remaining NOL to be carried forward to 2017 will range from \$15 million to \$20 million. The remaining NOL carryforward will begin to expire at the end of calendar 2030 and will fully expire by the end of calendar 2035 if not otherwise used prior thereto. To the extent that New BRT has taxable income that is not distributed to its shareholders, New BRT may offset such taxable income with its NOL carryforward and would not have to pay income tax, which would not impact our REIT status. As a result, New BRT is not necessarily required to distribute 90% or more of our earnings to maintain our REIT status.

*Recordkeeping Requirements.* New BRT is required to maintain records and request on an annual basis information from specified shareholders. These requirements are designed to assist New BRT in determining the actual ownership of its common stock and maintaining its qualification as a REIT.

### ***Failure to Qualify as a Real Estate Investment Trust***

If New BRT would otherwise fail to qualify as a REIT because of a violation of one of the requirements described above, New BRT's qualification as a REIT will not be terminated if the violation is due to reasonable cause and not willful neglect and New BRT pays a penalty tax of \$50,000 for the violation. The immediately preceding sentence does not apply to violations of the income tests described above or a violation of the asset tests described above, each of which has specific relief provisions that are described above.

If New BRT fails to qualify for taxation as a REIT in any taxable year, and the relief provisions do not apply, New BRT will have to pay tax, including any applicable alternative minimum tax, on New BRT's taxable income at regular corporate rates. New BRT will not be able to deduct distributions to shareholders in any year in which New BRT fails to qualify, nor will New BRT be required to make distributions to shareholders. In this event, to the extent of current and accumulated earnings and profits, all distributions to shareholders will be taxable to the shareholders as dividend income (which may be subject to tax at preferential rates) and corporate distributees may be eligible for the dividends-received deduction if such distributees satisfy the relevant provisions of the Code. Unless entitled to relief under specific statutory provisions, New BRT will also be disqualified from taxation as a REIT for the four taxable years following the year during which qualification was lost. New BRT might not be entitled to the statutory relief described above in all circumstances.



TABLE OF CONTENTS***Excess Inclusion Income***

If New BRT holds a residual interest in a REMIC or certain interests in a TMP from which New BRT derives excess inclusion income, New BRT may be required to allocate such income among its shareholders in proportion to the dividends received by New BRT's shareholders, even though New BRT may not receive such income in cash. To the extent that excess inclusion income is allocable to a particular shareholder, the income (1) would not be allowed to be offset by any net operating losses otherwise available to the shareholder, (2) would be subject to tax as unrelated business taxable income in the hands of most types of shareholders that are otherwise generally exempt from U.S. federal income tax, and (3) would result in the application of U.S. federal income tax withholding at the maximum rate (30%), without reduction pursuant to any otherwise applicable income tax treaty, to the extent allocable to most types of foreign shareholders.

**Taxation of Holders of New BRT Common Stock*****U.S. Shareholders***

*Dividends.* As long as New BRT qualifies as a REIT, distributions made by New BRT out of its current or accumulated earnings and profits, and not designated as capital gain dividends, will constitute dividends taxable to New BRT's taxable U.S. shareholders as ordinary income. Noncorporate U.S. shareholders generally will not be entitled to the preferential tax rate applicable to certain types of dividends except with respect to the portion of any distribution (a) that represents income from dividends New BRT received from a corporation in which New BRT owns shares (but only if such dividends would be eligible for the lower rate on dividends if paid by the corporation to its individual shareholders), (b) that is equal to the sum of New BRT's REIT taxable income (taking into account the dividends paid deduction available to New BRT) and certain net built-in gain with respect to property acquired from a C corporation in certain transactions in which New BRT must adopt the basis of the asset in the hands of the C corporation for New BRT's previous taxable year and less any taxes paid by New BRT during its previous taxable year, or (c) that represents earnings and profits that were accumulated in a non REIT taxable year, in each case, provided that certain holding period and other requirements are satisfied at both New BRT and individual shareholder level. Noncorporate U.S. shareholders should consult their own tax advisors to determine the impact of tax rates on dividends received from New BRT. Distributions made by New BRT will not be eligible for the dividends received deduction in the case of U.S. shareholders that are corporations. Distributions made by New BRT that New BRT properly designates as capital gain dividends will be taxable to U.S. shareholders as gain from the sale of a capital asset held for more than one year, to the extent that such dividends do not exceed our actual net capital gain for the taxable year, without regard to the period for which a U.S. shareholder has held the shares of New BRT common stock. Thus, with certain limitations, capital gain dividends received by an individual U.S. shareholder may be eligible for preferential rates of taxation. U.S. shareholders that are corporations may, however, be required to treat up to 20% of certain capital gain dividends as ordinary income.

To the extent that New BRT makes distributions not designated as capital gain dividends in excess of New BRT's current and accumulated earnings and profits, these distributions will be treated first as a tax-free return of capital to each U.S. shareholder. Thus, these distributions will reduce the adjusted basis that the U.S. shareholder has in the shares of New BRT common stock for tax purposes by the amount of the distribution, but not below zero. Distributions in excess of a U.S. shareholder's adjusted basis in the shares of New BRT common stock will be taxable as capital gains, provided that the shares of New BRT common stock have been held as a capital asset. For purposes of determining the portion of distributions on separate classes of shares of New BRT common stock that will be treated as dividends for U.S. federal income tax purposes, current and accumulated earnings and profits will be allocated to distributions resulting from priority rights of preferred stock before being allocated to other distributions.

Edgar Filing: BRT REALTY TRUST - Form 424B3

As described above, dividends authorized by New BRT in October, November, or December of any year and payable to a shareholder of record on a specified date in any of these months will be treated as both paid by New BRT and received by the shareholder on December 31 of that year, provided that New BRT actually pays the dividend on or before January 31 of the following calendar year. Shareholders may not include in their own income tax returns any net operating losses or capital losses of New BRT.

New BRT may make distributions to holders of shares of New BRT common stock that are paid in shares of New BRT common stock. In certain circumstances, these distributions may be intended to be treated as dividends for U.S. federal income tax purposes and a U.S. shareholder would, therefore, generally have taxable income

TABLE OF CONTENTS

with respect to such distributions of shares of New BRT common stock and may have a tax liability on account of such distribution in excess of the cash (if any) that is received.

U.S. shareholders holding shares of New BRT common stock at the close of New BRT's taxable year will be required to include, in computing the U.S. shareholders' long-term capital gains for the taxable year in which the last day of New BRT's taxable year falls, the amount of New BRT's undistributed net capital gain that New BRT designates in a written notice mailed to its shareholders. New BRT may not designate amounts in excess of New BRT's undistributed net capital gain for the taxable year. Each U.S. shareholder required to include the designated amount in determining the shareholder's long-term capital gains will be deemed to have paid, in the taxable year of the inclusion, the tax paid by New BRT in respect of the undistributed net capital gains. U.S. shareholders to whom these rules apply will be allowed a credit or a refund, as the case may be, for the tax such shareholders are deemed to have paid. U.S. shareholders will increase their basis in the shares of New BRT common stock by the difference between the amount of the includible gains and the tax deemed paid by the shareholder in respect of these gains.

Distributions made by New BRT and gain arising from a U.S. shareholder's sale or exchange of shares of New BRT common stock will not be treated as passive activity income. As a result, U.S. shareholders generally will not be able to apply any passive losses against that income or gain.

*Sale or Exchange of Shares of New BRT Common Stock.* When a U.S. shareholder sells or otherwise disposes of shares of New BRT common stock, the shareholder will recognize gain or loss for U.S. federal income tax purposes in an amount equal to the difference between (a) the amount of cash and the fair market value of any property received on the sale or other disposition, and (b) the holder's adjusted basis in the shares for tax purposes. This gain or loss will be capital gain or loss if the U.S. shareholder has held the shares as capital assets. The gain or loss will be long-term gain or loss if the U.S. shareholder has held the shares for more than one year at the time of sale or other disposition. Long-term capital gain of an individual U.S. shareholder is generally taxed at preferential rates. In general, any loss recognized by a U.S. shareholder when the shareholder sells or otherwise disposes of shares of New BRT common stock that the shareholder has held for six months or less, after applying certain holding period rules, will be treated as a long-term capital loss, to the extent of distributions received by the shareholder from New BRT that were required to be treated as long-term capital gains.

*Backup Withholding.* New BRT will report to its U.S. shareholders and the IRS the amount of dividends paid during each calendar year, and the amount of tax withheld, if any. Under the backup withholding rules, backup withholding may apply to a shareholder with respect to dividends paid unless the holder (a) is a corporation or comes within certain other exempt categories and, when required, demonstrates this fact, or (b) provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with applicable requirements of the backup withholding rules. The IRS may also impose penalties on a U.S. shareholder that does not provide New BRT with such shareholder's correct taxpayer identification number. A shareholder may credit any amount paid as backup withholding against the shareholder's income tax liability. In addition, New BRT may be required to withhold a portion of capital gain distributions to any shareholders who fail to certify their non-foreign status to New BRT.

*Taxation of Tax-Exempt Shareholders.* The IRS has ruled that amounts distributed as dividends by a REIT generally do not constitute unrelated business taxable income when received by a tax-exempt entity. Based on that ruling, provided that a tax-exempt shareholder is not one of the types of entity described below and has not held the shares of New BRT common stock as debt-financed property within the meaning of the Code, the dividend income from the shares of New BRT common stock will not be unrelated business taxable income to a tax-exempt shareholder. Similarly, income from the sale of shares of New BRT common stock will not constitute unrelated business taxable income unless the tax-exempt shareholder has held the shares as debt-financed property within the meaning of the Code or has used the shares in a trade or business.

Edgar Filing: BRT REALTY TRUST - Form 424B3

Notwithstanding the above paragraph, tax-exempt shareholders will be required to treat as unrelated business taxable income any dividends paid by New BRT that are allocable to New BRT's excess inclusion income, if any.

Income from an investment in shares of New BRT common stock will constitute unrelated business taxable income for tax-exempt shareholders that are social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts, and qualified group legal services plans exempt from U.S. federal income taxation

70

TABLE OF CONTENTS

under the applicable subsections of Section 501(c) of the Code, unless the organization is able to properly deduct amounts set aside or placed in reserve for certain purposes so as to offset the income generated by the shares of New BRT common stock. Prospective investors of the types described in the preceding sentence should consult such investors' own tax advisors concerning these set aside and reserve requirements.

Notwithstanding the foregoing, however, a portion of the dividends paid by a pension-held REIT will be treated as unrelated business taxable income to any trust that

- is described in certain provisions of the Code relating to qualified pension, profit-sharing and stock bonus plans;
- is described in certain provisions of the Code relating to tax-exempt organizations; and
- holds more than 10% (by value) of the equity interests in New BRT.

Tax-exempt pension, profit-sharing and stock bonus funds described in the first bullet point above are referred to below as qualified trusts. New BRT will be treated as a pension-held REIT if:

- New BRT would not have qualified as a REIT but for the fact that the Code provides that stock owned by qualified trusts will be treated, for purposes of the not closely held requirement, as owned by the beneficiaries of the trust (rather than by the trust itself); and either (a) at least one qualified trust holds more than 25% by value of the outstanding capital stock of New BRT or (b) one or more qualified trusts, each of which owns more than 10% by value of the outstanding capital stock of New BRT, hold in the aggregate more than 50% by value of the outstanding capital stock of New BRT.

If New BRT is treated as a pension-held REIT the percentage of any New BRT dividend treated as unrelated business taxable income to a qualifying trust is equal to the ratio of (a) the gross income of New BRT from unrelated trades or businesses, determined as though New BRT were a qualified trust, less direct expenses related to this gross income, to (b) the total gross income of New BRT, less direct expenses related to the total gross income. A *de minimis* exception applies where this percentage is less than 5% for any year. New BRT does not expect to be classified as a pension-held REIT.

The rules described above under the heading *U.S. Shareholders* concerning the inclusion of New BRT's designated undistributed net capital gains in the income of New BRT's shareholders will apply to tax-exempt entities. Thus, tax-exempt entities will be allowed a credit or refund of the tax deemed paid by these entities in respect of the includible gains.

**Medicare Tax.** A U.S. shareholder that is an individual or estate, or a trust that does not fall into a special class of trusts that is exempt from such tax, is subject to a 3.8% tax on the lesser of (1) the United States holder's net investment income (or undistributed net investment income in the case of an estate or trust) for the relevant taxable year and (2) the excess of the United States holder's modified adjusted gross income for the taxable year over a certain threshold (which in the case of individuals is between \$125,000 and \$250,000, depending on the individual's circumstances). A holder's net investment income generally includes the holder's dividend income and the holder's net gains from the disposition of shares of New BRT common stock, unless such dividends or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). If you are a U.S. shareholder that is an individual, estate or trust, you are urged to consult your tax advisors regarding the applicability of the Medicare tax to your income and gains in respect of your investment in New BRT common stock.

***Non-U.S. Shareholders***

The rules governing U.S. federal income taxation of non-U.S. shareholders are highly technical and complex. The following discussion is only a limited summary of these rules. Non-U.S. shareholders should consult with their own tax advisors to determine the impact of U.S. federal, state and local income tax laws or similar with regard to an investment in the shares of New BRT common stock, including any reporting requirements.

*Ordinary Dividends.* Distributions, other than distributions that are treated as attributable to gain from sales or exchanges by New BRT of U.S. real property interests, as discussed below, and other than distributions designated by New BRT as capital gain dividends, will be treated as ordinary income to the extent that the

TABLE OF CONTENTS

distributions are made out of New BRT's current or accumulated earnings and profits. A withholding tax equal to 30% of the gross amount of the distribution generally will apply to distributions of this kind to non-U.S. shareholders, unless an applicable tax treaty reduces that tax rate. However, if income from the investment in New BRT common stock is treated as effectively connected with the non-U.S. shareholder's conduct of a U.S. trade or business or is attributable to a permanent establishment that the non-U.S. shareholder maintains in the United States if that is required by an applicable income tax treaty as a condition for subjecting the non-U.S. shareholder to U.S. taxation on a net income basis, tax at regular graduated rates generally will apply to the non-U.S. shareholder in the same manner as U.S. shareholders are taxed with respect to dividends, and the 30% branch profits tax may also apply if the shareholder is a foreign corporation. New BRT expects that it or the required withholding agent will withhold U.S. tax at the rate of 30% on the gross amount of any dividends, other than dividends treated as attributable to gain from sales or exchanges of U.S. real property interests and capital gain dividends, paid to a non-U.S. shareholder, unless (a) a lower treaty rate applies and the required form evidencing eligibility for that reduced rate is submitted to New BRT or the appropriate withholding agent or (b) the non-U.S. shareholder files an IRS Form W-8-ECI or a successor form with New BRT or the appropriate withholding agent claiming that the distributions are effectively connected with the non-U.S. shareholder's conduct of a U.S. trade or business and in either case other applicable requirements were met.

If a non-U.S. shareholder receives an allocation of excess inclusion income with respect to a REMIC residual interest or an interest in a TMP owned by New BRT, the non-U.S. shareholder will be subject to U.S. federal income tax withholding at the maximum rate of 30% with respect to such allocation, without reduction pursuant to any otherwise applicable income tax treaty.

*Return of Capital.* Distributions in excess of New BRT's current and accumulated earnings and profits, which are not treated as attributable to the gain from New BRT's disposition of a U.S. real property interest, will not be taxable to a non-U.S. shareholder to the extent that the distributions do not exceed the non-U.S. shareholder's adjusted basis in such shareholder's shares of New BRT common stock. Distributions of this kind will instead reduce the adjusted basis of such shares. To the extent that distributions of this kind exceed the non-U.S. shareholder's adjusted basis in such shareholder's shares of New BRT common stock, the distributions will give rise to tax liability if the non-U.S. shareholder otherwise would have to pay tax on any gain from the sale or disposition of the shares, as described below. If it cannot be determined at the time a distribution is made whether the distribution will be in excess of current and accumulated earnings and profits, withholding will apply to the distribution at the rate applicable to dividends. However, the non-U.S. shareholder may seek a refund of these amounts from the IRS if it is subsequently determined that the distribution was, in fact, in excess of New BRT's current and accumulated earnings and profits.

Also, New BRT (or applicable withholding agent) could potentially be required to withhold at least 15% of any distribution in excess of New BRT's current and accumulated earnings and profits, even if the non-U.S. shareholder is not liable for U.S. tax on the receipt of that distribution. However, a non-U.S. shareholder may seek a refund of these amounts from the IRS if the non-U.S. shareholder's tax liability with respect to the distribution is less than the amount withheld. Such withholding generally should not be required if a non-U.S. shareholder would not be taxed under the Foreign Investment in Real Property Tax Act of 1980, as amended ( FIRPTA ), upon a sale or exchange of shares of New BRT common stock. See discussion below under —*Sales of Shares of New BRT Common Stock* .

*Capital Gain Dividends; Distributions Attributable to Sale or Exchange of Real Property.* Distributions that are attributable to gain from sales or exchanges by New BRT of U.S. real property interests that are paid with respect to any class of New BRT common stock that is regularly traded on an established securities market located in the United States and held by a non-U.S. shareholder who does not own more than 5% of such class of stock at any time during the one year period ending on the date of distribution will be treated as a normal distribution by New BRT, and such distributions will be taxed as described above in —*Ordinary Dividends* .

For any year in which New BRT qualifies as a REIT, a non-U.S. shareholder may incur tax on distributions that are attributable to gain from any sale or exchange of U.S. real property interests under special provisions of the U.S. federal income tax laws referred to as FIRPTA. The term U.S. real property interests includes certain interests in real property and stock in corporations at least 50% of whose assets consists of interests in real property. Under those rules, a non-U.S. shareholder is taxed on distributions attributable to gain from sales of United States real property interests as if such gain were effectively connected with a U.S. trade or business of the non-U.S. shareholder. A non-U.S. shareholder thus would be taxed on such a distribution at the normal



TABLE OF CONTENTS

capital gains rates applicable to U.S. shareholders, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual. A non-U.S. corporate holder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on such a distribution. Except as described below with respect to regularly traded stock, withholding is required at a rate of 35% of any distribution that New BRT could designate as a capital gain dividend. A non-U.S. shareholder may receive a credit against its tax liability for the amount we withhold. Any distribution with respect to any class of stock which is regularly traded on an established securities market located in the United States, such as New BRT common stock, will not be treated as gain recognized from the sale or exchange of a United States real property interest if the non-U.S. shareholder did not own more than 10% of such class of stock at any time during the taxable year within which the distribution is received. The distribution will be treated as an ordinary dividend to the non-U.S. shareholder and taxed as an ordinary dividend that is not a capital gain. A non-U.S. shareholder is not required to file a U.S. federal income tax return by reason of receiving such a distribution, and the branch profits tax will not apply to such a distribution. However, the distribution will be subject to U.S. federal income tax withholding as an ordinary dividend as described above.

Distributions to a non-U.S. shareholder that are designated by New BRT at the time of distribution as capital gain dividends that are not attributable to or treated as attributable to the disposition by New BRT of a U.S. real property interest generally will not be subject to U.S. federal income taxation, except as described above.

*Share Distributions.* New BRT may make distributions to holders of shares of New BRT common stock that are paid in shares of New BRT common stock. In certain circumstances, these distributions may be intended to be treated as dividends for U.S. federal income tax purposes and, accordingly, would be treated in a manner consistent with the discussion above under —*Ordinary Dividends* and —*Capital Gain Dividends*. If New BRT (or applicable withholding agent) is required to withhold an amount in excess of any cash distributed along with the shares of New BRT common stock, some of the shares that would otherwise be distributed will be retained and sold in order to satisfy such withholding obligations.

*Sales of shares of New BRT Common Stock.* Gain recognized by a non-U.S. shareholder upon a sale or exchange of shares of New BRT common stock generally will not be taxed under FIRPTA if New BRT is a domestically controlled REIT, defined generally as a REIT, less than 50% of the fair market value of the outstanding stock of which is and was held directly or indirectly by foreign persons at all times during a specified testing period. New BRT believes that it will be a domestically controlled REIT upon the Effective Time, and, therefore, assuming that New BRT continues to be a domestically controlled New BRT, that taxation under FIRPTA generally will not apply to the sale of shares of New BRT common stock. However, gain to which FIRPTA does not apply will be taxable to a non-U.S. shareholder if investment in the shares of New BRT common stock is treated as effectively connected with the non-U.S. shareholder's U.S. trade or business or is attributable to a permanent establishment that the non-U.S. shareholder maintains in the United States (that is required by an applicable income tax treaty). In this case, the same treatment will apply to the non-U.S. shareholder as to U.S. shareholders with respect to the gain. In addition, gain to which FIRPTA does not apply will be taxable to a non-U.S. shareholder if the non-U.S. shareholder is a nonresident alien individual who was present in the United States for 183 days or more during the taxable year and has a tax home in the United States, or maintains an office or a fixed place of business in the United States to which the gain is attributable. In this case, a 30% tax will apply to the nonresident alien individual's capital gains. A similar rule will apply to capital gain dividends to which this statute does not apply.

If New BRT does not qualify as a domestically controlled REIT, the tax consequences to a non-U.S. shareholder of a sale of shares of New BRT common stock depends upon whether such stock is regularly traded on an established securities market and the amount of such stock that is held by the non-U.S. shareholder. Specifically, a non-U.S. shareholder that holds a class of shares of New BRT common stock that is traded on an established securities market will only be subject to FIRPTA in respect of a sale of such shares if the shareholder owned more than 10% of the outstanding shares of such class at any time during a specified period. This period is generally the shorter of the period

that the non-U.S. shareholder owned such shares or the five-year period ending on the date when the shareholder disposed of the shares. A non-U.S. shareholder that holds shares of a class of New BRT common stock that is not traded on an established securities market will only be subject to FIRPTA in respect of a sale of such shares if on the date the shares were acquired by the shareholder such shares had a fair market value greater than the fair market value on that date of 10% of the regularly traded class of New BRT's outstanding shares with the lowest fair market value. If a non-U.S. shareholder holds a class of

TABLE OF CONTENTS

shares of New BRT common stock that is not regularly traded on an established securities market, and subsequently acquires additional shares of the same class, then all such shares must be aggregated and valued as of the date of the subsequent acquisition for purposes of the 10% test that is described in the preceding sentence. If tax under FIRPTA applies to the gain on the sale of shares of New BRT common stock, the same treatment would apply to the non-U.S. shareholder as to U.S. shareholders with respect to the gain, subject to any applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals.

*Backup Withholding and Information Reporting.* If you are a non-U.S. shareholder, we and other payers are required to report payments of dividends on IRS Form 1042-S even if the payments are exempt from withholding. However, you are otherwise generally exempt from backup withholding and information reporting requirements with respect to:

- dividend payments and
  - the payment of the proceeds from the sale of shares of New BRT common stock effected at a U.S. office of a broker, as long as the income associated with these payments is otherwise exempt from U.S. federal income tax, and:
    - the payor or broker does not have actual knowledge or reason to know that you are a U.S. person and you have furnished to the payor or broker:
      - a valid IRS Form W-8BEN or W-8BEN-E, as applicable, or an acceptable substitute form upon which you certify, under penalties of perjury, that you are a non-U.S. person, or
      - other documentation upon which the payor or broker may rely to treat the payments as made to a non-U.S. person in accordance with U.S. Treasury regulations, or
      - you otherwise establish an exemption.

Payment of the proceeds from the sale of shares of New BRT common stock effected at a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, a sale of such shares that is effected at a foreign office of a broker will be subject to information reporting and backup withholding if:

- the proceeds are transferred to an account maintained by you in the United States,
- the payment of proceeds or the confirmation of the sale is mailed to you at a United States address, or the sale has some other specified connection with the United States as provided in U.S. Treasury regulations,
- unless the broker does not have actual knowledge or reason to know that you are a U.S. person and the documentation requirements described above are met or you otherwise establish an exemption.

In addition, a sale of shares of New BRT common stock will be subject to information reporting if such sale is effected at a foreign office of a broker that is:

- a U.S. person,
- a controlled foreign corporation for U.S. federal tax purposes,
- a foreign person 50% or more of whose gross income is effectively connected with the conduct of a U.S. trade or business for a specified three-year period, or
- a foreign partnership, if at any time during its tax year:
  - one or more of such foreign partnership's partners are U.S. persons, as defined in U.S. Treasury regulations, who in the aggregate hold more than 50% of the income or capital interest in the partnership, or

## TABLE OF CONTENTS

- such foreign partnership is engaged in the conduct of a U.S. trade or business, unless the broker does not have actual knowledge or reason to know that you are a United States person and the documentation
- requirements described above are met or you otherwise establish an exemption. Backup withholding will apply if the sale is subject to information reporting and the broker has actual knowledge that you are a U.S. person.

You generally may obtain a refund of any amounts withheld under the backup withholding rules that exceed your income tax liability by timely filing a refund claim with the IRS.

### ***FATCA Withholding***

Pursuant to Sections 1471 through 1474 of the Code, commonly known as the Foreign Account Tax Compliance Act ( FATCA ), a 30% withholding tax ( FATCA withholding ) may be imposed on certain payments to you or to certain foreign financial institutions, investment funds and other non-U.S. persons receiving payments on your behalf if you or such persons fail to comply with certain information reporting requirements. Such payments will include U.S.-source dividends and the gross proceeds from the sale or other disposition of stock that can produce U.S.-source dividends. Payments of dividends that you receive in respect of New BRT common stock could be affected by this withholding if you are subject to the FATCA information reporting requirements and fail to comply with them or if you hold shares of New BRT common stock through a non-U.S. person (*e.g.*, a foreign bank or broker) that fails to comply with these requirements (even if payments to you would not otherwise have been subject to FATCA withholding). Payments of gross proceeds from a sale or other disposition of shares of New BRT common stock could also be subject to FATCA withholding unless such disposition occurs before January 1, 2019. You should consult your own tax advisors regarding the relevant U.S. law and other official guidance on FATCA withholding.

### ***Federal Estate Taxes***

Shares of New BRT common stock held by a non-U.S. shareholder at the time of death will be included in the shareholder's gross estate for U.S. Federal estate tax purposes, unless an applicable estate tax treaty provides otherwise.

### **Other Tax Considerations**

*State, Local and Foreign Taxes.* State, local or foreign taxation may apply to New BRT and its shareholders in various state or local jurisdictions, including those in which New BRT or its shareholders transact business or reside. The state, local and foreign tax treatment of New BRT and its shareholders may not conform to the U.S. federal income tax consequences discussed above. Consequently, shareholders should consult their own tax advisors regarding the effect of state, local and foreign tax laws on an investment in New BRT.

*Legislative Proposals.* You should recognize that our and your present U.S. federal income tax treatment may be modified by legislative, judicial or administrative actions at any time, which may be retroactive in effect. The rules dealing with U.S. federal income taxation are constantly under review by Congress, the IRS and the Treasury Department, and statutory changes as well as promulgation of new regulations, revisions to existing statutes, and revised interpretations of established concepts occur frequently. We are not aware of any pending legislation that would materially affect our or your taxation as described in this prospectus. You should, however, consult your advisors concerning the status of legislative proposals that may pertain to the ownership and disposition of shares of New BRT common stock.

## TABLE OF CONTENTS

### **PROPOSALS REGARDING NEW BRT'S ORGANIZATIONAL DOCUMENTS**

Old BRT shareholders are being asked to consider and vote on the approval of certain provisions in the New BRT Charter and New BRT Bylaws that represent material changes from Old BRT's organizational documents as follows:

- Proposal 2.B — New BRT REIT Restriction Proposal — a provision in the New BRT Charter restricting the ownership and transfer of New BRT capital 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 or more than 6.0% in value of the aggregate outstanding shares of all classes and series of New BRT's stock. Completion of the Conversion requires approval of the New BRT REIT Restriction Proposal.
- Proposal 2.C — New BRT Director Removal Proposal — a provision in the New BRT Charter providing that directors may only be removed 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.
- Proposal 2.D — Majority Voting in Election of Directors Proposal — a provision in the New BRT Bylaws providing for the election of New BRT directors in uncontested elections by a majority of the votes cast and by a plurality of the votes cast in contested elections.
- Proposal 2.E — Shareholder Consent in Lieu of Meeting Proposal — a provision in 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.
- Proposal 2.F — Special Shareholder Meeting Proposal — a provision in 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.

For a description of these provisions of New BRT Charter and the New BRT Bylaws, see *Description of New BRT Stock*, *Certain Provisions of Maryland Law and the New BRT Charter and the New BRT Bylaws* and *Comparison of Rights of Shareholders of Old BRT and New BRT*.

If the Amendment and the Conversion are approved but the New BRT Director Removal Proposal is not approved by 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. Old BRT's Declaration of Trust also currently also permits the removal of trustees for cause, as determined in the reasonable judgment of two-thirds of the remaining trustees. However, removal of directors by the board of directors of a Maryland corporation, regardless of cause, is not permitted under the MGCL, and if the Amendment and the Conversion are approved but the New BRT Director Removal Proposal is not approved, no comparable provision will be included in the New BRT Charter.

If the Amendment and the Conversion are approved but any of the Majority Voting in Election of Directors Proposal, Shareholder Consent in Lieu of Meeting Proposal or Special Shareholder Meeting Proposals are not approved by Old BRT shareholders at the Annual Meeting, the applicable provisions of the New BRT Bylaws relating to each such Proposal that was not approved will be revised to contain provisions which will have substantively the same effect as the applicable current provisions of Old BRT's Declaration of Trust.

#### **Required Vote**

The affirmative vote of a majority of the outstanding Old Shares is required for the approval of each of the New BRT's Organizational Documents Proposals.

**THE OLD BRT BOARD OF TRUSTEES UNANIMOUSLY RECOMMENDS THAT SHAREHOLDERS VOTE FOR EACH OF THE PROPOSALS REGARDING NEW BRT 'S ORGANIZATIONAL DOCUMENTS.**

76

## TABLE OF CONTENTS

### **GOVERNANCE OF OUR COMPANY**

#### **General**

We are governed by a board of trustees (the Board) and by the committees of the Board. Members of the Board are kept informed about our business through discussions with our Chairman, our Chief Executive Officer and our other officers, by reviewing materials provided to them and by participating in meetings of the Board and its committees. During 2016, the Board held four meetings and each trustee, other than Mr. Kenneth Bernstein who resigned as a trustee in March 2016, attended at least 75% of the aggregate number of Board meetings and meetings of all committees of the Board on which such trustee served. We typically schedule a Board meeting in conjunction with our annual meeting of shareholders and encourage our Trustees to attend the annual meeting of shareholders. More than 90% of the Trustees attended our 2016 annual meeting of shareholders.

#### **Code of Business Conduct and Ethics**

We have adopted a code of business conduct and ethics that applies to all Trustees, officers, employees, agents and consultants, including our Chief Executive Officer, principal financial officer, principal accounting officer or controller or person performing similar functions. The code of business conduct and ethics covers a variety of topics, including those required by the Securities and Exchange Commission and the New York Stock Exchange. Topics covered include, but are not limited to, conflicts of interest, confidentiality of information, and compliance with laws and regulations. The code of business conduct and ethics, as amended and restated, is available at the corporate governance section of our website at [www.brtrealty.com](http://www.brtrealty.com) and may be obtained by writing to us at 60 Cutter Mill Road, Suite 303, Great Neck, New York 11021, Attention: Secretary. During 2016, there were no waivers of the provisions of the code of business conduct and ethics with respect to any of our trustees, officers, employees, agents or consultants. We will post any amendments to, or waivers of, our code of business conduct and ethics on our website.

#### **Risk Oversight**

Management is responsible for the day-to-day management of risks we face. Our Board has overall responsibility for overseeing risk management with a focus on the more significant risks facing us. Our audit committee oversees risk policies and processes related to our financial statements, financial reporting processes and liquidity risks, our nominating and corporate governance committee oversees corporate governance risks and our compensation committee oversees risks relating to remuneration of our officers and employees. The compensation committee does not believe that the compensation programs which are in place give rise to any risk that is reasonably likely to have a material adverse effect on us.

At each quarterly meeting of the audit committee, a portion of the meeting is devoted to reviewing the status of the properties in our real estate portfolio and other matters (including related party transactions) which might have a material adverse impact on current or future operations. A senior executive officer reports to the committee regarding the activities of our disclosure controls and procedures committee — this committee is comprised primarily of the individuals responsible for our financial and regulatory reporting, meets approximately six to eight times a year and is responsible for identifying areas of risk and in particular, risks with respect to disclosure controls and internal controls over financial reporting. In addition, a senior executive officer, our internal auditor and the independent registered public accounting firm reviewing or auditing, as the case may be, our financial statements, reports to the committee with respect to our compliance with our internal control policies in order to ascertain that no failures of a material nature have occurred. This process assists the audit committee in overseeing the risks related to our financial statements and the financial reporting process.

At Board meetings, the Trustees review significant risk issues brought to their attention by management, the audit committee and other Board committees.

### **Leadership Structure**

Our company is led by Israel Rosenzweig, Chairman of our Board, whom we refer to as our Chairman, and Jeffery A. Gould, President and Chief Executive Officer, whom we refer to as our Chief Executive Officer. The Board believes that: (i) separating the role of Chairman and Chief Executive Officer is the most appropriate structure at this time because it makes the best use of the abilities of Messrs. Rosenzweig and Gould; and (ii) this leadership structure provides appropriate risk oversight of our activities.



TABLE OF CONTENTS**Committees of the Board**

Our Board has three standing committees: an audit committee, a compensation committee, and a nominating and corporate governance committee. The Board has adopted a charter for each standing committee, as well as corporate governance guidelines that address the make-up and functioning of the Board and its committees. The charter for each standing committee requires that such committee be comprised of at least three independent trustees and in the case of the audit committee, also requires that at least one member of the committee qualify as a financial expert. All of the members of each committee were independent during their period of service on such committee and in the case of the audit committee, each such member was also financially literate.

You can find each charter and the corporate governance guidelines by accessing the corporate governance section of our website at [www.brcrealty.com](http://www.brcrealty.com). Copies of these charters and the corporate governance guidelines may be obtained by writing to us at 60 Cutter Mill Road, Suite 303, Great Neck, New York 11021, Attention: Secretary.

The table below provides membership and meeting information for each of the committees of the Board for 2016:

| <b>Name</b>        | <b>Audit</b> | <b>Compensation</b> | <b>Nominating<br/>and Corporate<br/>Governance</b> |
|--------------------|--------------|---------------------|--|
| Alan H. Ginsburg   |              |                     |  |
| Louis C. Grassi    | Chair*       |                     |  |
| Gary Hurand        |              |                     | Chair  |
| Jeffrey Rubin      |              | Chair               |  |
| Jonathan H. Simon  |              |                     |  |
| Elie Weiss         |              |                     |  |
| Number of Meetings | 5            | 2                   | 2  |

\* Audit committee financial expert.

*Audit Committee*

This committee is responsible for assisting the board in overseeing, among other things, (i) the integrity of our financial statements, (ii) our compliance with legal and regulatory requirements, (iii) our independent registered public accounting firm's qualification and independence, (iv) the performance of the accounting firm performing our internal control audit function, and (v) the preparation of the audit committee report required by the Securities and Exchange Commission for inclusion in this proxy statement. This committee is also responsible for the selection and engagement of our independent registered public accounting firm and for approving related party transactions.

*Compensation Committee*

This committee reviews and makes recommendations and/or determinations with respect to the salaries, bonuses and stock awards of our trustees and named executive officers.

*Nominating and Corporate Governance Committee*

This committee's principal responsibilities include proposing to the Board a slate of nominees for election to the Board at the annual meeting of shareholders, recommending committee assignments to the Board, making a recommendation to the Board with respect to the independence of each Trustee and nominee, identifying and recommending candidates to fill vacancies on the Board or committees thereof between annual meetings of shareholders, overseeing Board and

committee performance evaluations, proposing a slate of officers to the Trustees for election at the annual meeting of the Board and monitoring corporate governance matters, including overseeing our corporate governance guidelines.

**Trustee Qualifications**

The Board believes that it should be comprised of Trustees with complementary backgrounds, and that Trustees should, at a minimum, have expertise that may be useful to us. Our nominating and corporate

78

## TABLE OF CONTENTS

governance committee has not adopted a formal diversity policy in connection with the consideration of Trustee nominations or the selection of nominees. It considers the personal and professional attributes and the business experience of each trustee candidate to promote diversity of expertise and experience among our trustees. Additionally, Trustees should possess the highest personal and professional ethics and should be willing and able to devote the required amount of time to our business.

When considering candidates for Trustee, the nominating and corporate governance committee will take into account a number of factors, including the following:

- Independence from management;
- Whether the candidate has relevant business experience;
- Judgment, skill, integrity and reputation;
- Financial and accounting background, to enable the committee to determine whether the candidate would be suitable for audit committee membership;
- Executive compensation background, to enable the committee to determine whether the candidate would be suitable for compensation committee membership; and
- The size and composition of the existing board.

The nominating and corporate governance committee will consider candidates for Trustee suggested by shareholders, applying the criteria for candidates described above, considering the additional information referred to below and evaluating such nominees in the same manner as other candidates. Shareholders wishing to suggest a candidate for nomination for election as a Trustee should write to our Secretary and include:

- A statement that the writer is a shareholder and is proposing a candidate for consideration by the committee;
- The name of and contact information for the candidate;
- A statement of the candidate's business and educational experience;
- Information regarding each of the factors listed above sufficient to enable the committee to evaluate the candidate;
- A statement detailing any relationship between the candidate and any of our competitors;
- Detailed information about any relationship or understanding between the proposing shareholder and the candidate; and
- A statement that the candidate is willing to be considered and willing to serve as a trustee if nominated and elected.

Before nominating a sitting Trustee for re-election at an annual meeting of shareholders, the nominating and corporate governance committee will consider:

- The Trustee's performance on the board; and
- Whether the Trustee's re-election would be consistent with our corporate governance guidelines.

When seeking candidates for Trustee, the nominating and corporate governance committee may solicit suggestions from management, incumbent Trustees or others. The committee or its chairman will interview a candidate if it is believed the candidate might be suitable to be a Trustee. The nominating and corporate governance committee may also ask the candidate to meet with management. If the nominating and corporate governance committee believes a candidate would be a valuable addition to the board, it will recommend the candidate's nomination to the full board.

The nominating and corporate governance committee generally intends to recommend that the Board nominate incumbent Trustees who the committee believes will continue to make important contributions to us, inasmuch as the committee believes that the continuing service of qualified incumbents promotes stability and continuity, giving us the benefit of the familiarity and insight into our affairs that such Trustees have accumulated during their tenure, while contributing to the Board's ability to work as a collective body.



## TABLE OF CONTENTS

### **Independence of Trustees**

In determining whether our Trustees are independent, we apply the New York Stock Exchange's corporate governance listing standards. Such standards provide:

- No Trustee qualifies as independent unless the board affirmatively determines that the trustee has no material relationship with us or any of our subsidiaries (either directly or as a partner, shareholder or officer of an organization that has a relationship with us or any of our subsidiaries);
- A Trustee who is an employee, or whose immediate family member is an executive officer, of ours or any of our subsidiaries is not independent until three years after the end of such relationship;  
A Trustee who received, or whose immediate family member received, during any twelve-month period within the last three years, more than \$120,000 in direct compensation from us or any of our subsidiaries, other than director and committee fees and pension or other forms of deferred compensation for prior services (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than \$120,000 in any twelve-month period;
- A Trustee who is, or who has an immediate family member who is, a current partner of our internal or external auditor, a trustee who is a current employee of our internal or external auditor, a trustee who has an immediate family member who is a current employee of our internal or external auditor and who personally participates in our audit, or a trustee who was, or whose immediate family member was, within the last three years, a partner or employee of our internal or external auditor and personally worked on our audit within that time, cannot be considered independent;  
A Trustee who is employed, or whose immediate family member is employed, as an executive officer of another company where any of our or any of our subsidiaries' present executive officers serve on that company's compensation committee is not independent until three years after the end of such service or employment relationship; and
- A Trustee who is a current employee, or whose immediate family member is a current executive officer, of a company that has made payments to, or received payments from, us or any of our subsidiaries for property or services in an amount which, in any single fiscal year, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues, is not independent until the commencement of the third fiscal year following the fiscal year in which such payments fall below such threshold.

The Board affirmatively determined that each of Alan H. Ginsburg, Louis C. Grassi, Gary Hurand, Jeffrey Rubin, Jonathan H. Simon and Elie Weiss, who together constitute 60% of our trustees, is independent for the purposes of Section 303A of the Listed Company Manual of the New York Stock Exchange, and all of the members of our committees are independent for the purposes of Section 303A. All of the members of our Audit Committee also meet the independence requirement of Rule 10A-3 under the Exchange Act. The Board based these determinations primarily on a review of the responses of our trustees to questions regarding employment and compensation history, affiliations and family and other relationships, discussions with Trustees and relevant facts and circumstances provided to management of any relationships bearing on the independence of a Trustee.

In determining the independence of each of the foregoing Trustees, the Board considered that Gary Hurand owns approximately a 40% beneficial interest in a family entity which owns a preferred limited partnership interest in Gould Investors L.P., an affiliate of our company. Gould Investors is primarily engaged in the ownership and operation of real estate properties held for investment. See *Certain Relationships and Related Transactions*. The preferred limited partnership interest owned by the Hurand family entity had, as of September 30, 2016, a deemed value of approximately \$10.3 million (the redemption price of the interest) and limited voting rights, and no member of the Hurand family, including Mr. Hurand, has any management involvement in Gould Investors. For 2016, distributions of approximately \$514,000 were accrued and paid on the interests owned by the Hurand family entity.

The Board concluded that the foregoing did not disqualify Mr. Hurand from being independent.



TABLE OF CONTENTS

We refer to Messrs. Ginsburg, Grassi, Hurand, Rubin, Simon and Weiss, collectively, as the Non-Management Trustees. We refer to the remaining Trustees (*i.e.*, Israel Rosenzweig, Jeffrey A. Gould, Matthew J. Gould and Fredric H. Gould), each of whom is an executive officer of BRT or one or more of its affiliates, collectively, as the Management Trustees.

**Compensation Committee Interlocks and Insider Participation**

During 2016, the members of our compensation committee were Jeffrey Rubin (chair), Alan H. Ginsburg and Jonathan H. Simon. None of the members of the compensation committee has ever been an officer or employee of our company or any of our subsidiaries or has had any relationship with us that would require disclosure under Item 404 of Regulation S-K (Certain Relationships and Related Party Transactions). During 2016, none of our executive officers served on the compensation committee (or equivalent), or the board of directors, of another entity whose executive officer(s) served on our compensation committee or our Board.

**Compensation of Trustees**

The following table sets forth the cash compensation payable to the trustees for service on the Board and its committees, all of whom, except as indicated below, are Non-Management Trustees:

|   | <b>Board</b>           | <b>Audit</b> | <b>Committee<br/>Compensation</b> | <b>Nominating</b> |
|---|------------------------|--------------|-----------------------------------|-------------------|
| Annual retainer                           | \$ 20,000              | \$ 5,000     | \$ 4,000                          | \$ 3,000          |
| Presence in-person at meeting             | 1,200                  | 1,000        | 1,000                             | 1,000             |
| Presence by telephone at meeting          | 750                    | 750          | 750                               | 750               |
| Chairman's annual retainer <sup>(1)</sup> | 200,000 <sup>(2)</sup> | 10,000       | 8,000                             | 4,000             |

(1) The chairman of the applicable committee receives both the annual retainer and the chairman's annual retainer for the committee for which he serves as chairman.

Reflects the compensation paid to Israel Rosenzweig, a member of management. See *Executive*

(2) *Compensation—Compensation Discussion and Analysis—Chairman of the Board's Compensation and Certain Relationships and Related Transactions.*

In addition, in 2015 and 2016, each Non-Management Trustee was awarded 3,250 and 3,500 restricted common shares pursuant to our 2012 Incentive Plan and in 2017, each Non-Management Trustee was awarded 3,625 restricted common shares pursuant to our Amended and Restated 2016 Incentive Plan. The restricted shares have a five year vesting period, subject to acceleration upon the occurrence of specified events, during which the registered owner is entitled to vote and receive distributions, if any, on such shares. Non-management Trustees who reside outside of the local area in which our executive office is located are reimbursed for travel expenses incurred in attending Board and committee meetings.

The following table sets forth the cash and non-cash compensation of trustees for 2016:

| <b>Name<sup>(1)</sup></b>        | <b>Fees<br/>Earned<br/>or Paid<br/>in Cash<br/>(\$)</b> | <b>Share<br/>Awards<br/>(\$)<sup>(2)</sup></b> | <b>Total<br/>(\$)</b> |
|----------------------------------|---|--|-----------------------|
| Kenneth Bernstein <sup>(3)</sup> | 19,250  | —  | 19,250                |
| Alan H. Ginsburg*                | 31,000  | 21,700   | 52,700                |

Edgar Filing: BRT REALTY TRUST - Form 424B3

|                  |        |        |        |
|------------------|--------|--------|--------|
| Louis C. Grassi* | 49,750 | 21,700 | 71,450 |
| Gary Hurand*     | 41,000 | 21,700 |        |