BRT Apartments Corp.
Form POS AM
May 17, 2017
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AS FILED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION ON MAY 17, 2017
REGISTRATION NO. 333-213162
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1 to
FORM S 3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BRT APARTMENTS CORP.
(Exact name of registrant as specified in its charter)

MARYLAND	13 2755856	
(State or other jurisdiction of incorporation or organization)		(I.R.S. Employer Identification No.)

60 Cutter Mill Road
Great Neck, New York 11021
(516) 466 3100
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

S. Asher Gaffney, Esq.
Secretary and Counsel
BRT Apartments Corp.
60 Cutter Mill Road
Great Neck, New York 11021
(516) 466 3100
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copy to:
Jeffrey A. Baumel, Esq.
Dentons US LLP
1221 Avenue of the Americas
New York, New York 10020
(212) 768-6700

Approximate date of commencement of proposed sale to the public:
From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. o

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ý

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

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

for the same offering. o

If this Form is a registration statement pursuant to General Instruction I.D. or a post effective amendment thereto that shall become effective upon the filing with the Commissions pursuant to Rule 462(e) under the Securities Act check the following box. o

If this Form is a post effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. o

Indicate by check mark whether registrant is large accelerated filer, an accelerated filer, a non accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer," “smaller reporting company” and "emerging growth company" in Rule 12b 2 of the Exchange Act.

Large Accelerated filer o	Accelerated Filer ý	Non Accelerated filer o (Do not check if a smaller reporting company	Smaller reporting company o Emerging growth company o

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for comply with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of Securities Act. o

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CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)(2)(3)	Proposed maximum offering price per unit(1)	Proposed maximum aggregate offering price(1)(2)(3)	Amount of registration fee(4)
Shares of Common Stock, par value $0.01 per share				
Shares of Preferred Stock, par value $0.01 per share				
Warrants				
Subscription Rights				
TOTAL	$75,000,000	100%	$75,000,000	$7,553

(1) Not specified as to each class of securities to be registered pursuant to General Instruction II.D. of Form S 3 under the Securities Act of 1933, as amended (the "Securities Act").

(2) The Registrant is hereby registering an indeterminate number of each identified class of its securities up to a proposed maximum aggregate offering price of $75,000,000, which may be offered from time to time in unspecified numbers at unspecified prices. The Registrant has estimated the proposed maximum aggregate offering price solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act. Securities registered hereunder may be sold separately, together or as units with other securities registered hereunder. The Registrant is hereby also registering an indeterminate number of each class of its securities that may be purchased by underwriters to cover over allotments, if any, up to a proposed maximum offering price of $75,000,000.

(3) The Registrant is hereby registering such indeterminate number of each identified class of the identified securities as may be issued upon conversion, exchange, or exercise of any other securities that provide for such conversion, exchange or exercise, up to a proposed maximum offering price of $75,000,000. In addition, pursuant to Rule 416 under the Securities Act, the shares of common stock and preferred stock being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions.

(4) Calculated pursuant to Rule 457(o) under the Securities Act. An aggregate filing fee of $7,553 has been previously paid.

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

EXPLANATORY NOTE

This Post-Effective Amendment (this "Post-Effective Amendment") relates to the Registration Statement on Form S-3 (No. 333-213162) (the "Registration Statement") originally filed by BRT Realty Trust, a Massachusetts business trust (the "Predecessor Registrant"), with the U.S. Securities and Exchange Commission (the "Commission"). This Post-Effective Amendment is being filed pursuant to Rule 414 under the Securities Act of 1933, as amended (the "Securities Act"), by BRT Apartments Corp., a Maryland corporation (the "Company" or the "Registrant"), as the successor registrant to the Predecessor Registrant.

On March 18, 2017, the Predecessor Registrant consummated a conversion (the "Conversion") whereby it converted from a Massachusetts business trust to a Maryland corporation. The Conversion was consummated pursuant to a plan of conversion dated as of December 8, 2016. At the effective time of the Conversion, each outstanding share of beneficial interest of the Predecessor Registrant automatically converted into one share of common stock, par value $0.01 per share ("Common Stock"), of the Company.

As a result of the Conversion, the Company is the successor issuer to the Predecessor Registrant pursuant to Rule 414 under the Securities Act. In accordance with Rule 414(d), the Company hereby expressly adopts the Registration Statement as its own registration statement except as amended by this Post-Effective Amendment, for all purposes of the Securities Act and the Securities Exchange Act of 1934, as amended. Pursuant to Rule 12g-3(a) under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), the Common Stock of the Company, as the successor issuer to Predecessor Registrant, is deemed registered under Section 12(b) of the Exchange Act. The Common Stock is listed on the New York Stock Exchange ("NYSE") under the symbol "BRT" in the same manner that the beneficial interests of the Predecessor Registrant were listed on the NYSE. No additional securities are being registered hereby under this Post-Effective Amendment.

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PROSPECTUS
$75,000,000
BRT APARTMENTS CORP.
Shares of Common Stock
Shares of Preferred Stock
Warrants
Subscription Rights

We may offer and sell, from time to time, together or separately, in one or more offerings, (i) shares of common stock, par value $0.01 per share, which we refer to herein as "common stock", (ii) shares of preferred stock, par value $0.01 per share, which we may issue in one or more series and which we refer to herein as "preferred stock", (iii) warrants to purchase our equity securities and (iv) subscription rights, up to a maximum aggregate offering price of $75,000,000. We will offer our securities in amounts, at prices and on the terms to be determined at the time we offer the securities. Each time we offer securities, we will provide a supplement to this prospectus that will contain more specific information about the terms of that offering, including the price at which those securities will be sold. We may also add, update or change in the prospectus supplement any of the information contained in this prospectus. Our common stock is listed for trading on the New York Stock Exchange under the trading symbol "BRT." Each prospectus supplement will indicate if the securities offered thereby will be listed on any securities exchange.

The securities may be offered on a delayed or continuous basis and may be offered and sold directly by us, through agents, underwriters or dealers as designated from time to time, through a combination of these methods or through any other method provided in the applicable prospectus supplement. If any underwriters are involved in the sale of the securities, the names of such underwriters and any applicable commissions or discounts will be set forth in a prospectus supplement. For additional information on the methods of sale of the securities, you should refer to the section entitled "Plan of Distribution" in this prospectus and to the corresponding section in the applicable prospectus supplement. You should read this prospectus and the applicable prospectus supplement carefully before you invest. This prospectus may not be used to sell securities unless accompanied by a prospectus supplement or a free writing prospectus.

We are organized and conduct our operations so as to qualify as a real estate investment trust, or REIT, for federal income tax purposes. The specific terms of the securities may include limitations on actual, beneficial or constructive ownership and restrictions on the transfer of the securities that may be appropriate to preserve our status as a REIT.

Pursuant to General Instruction I.B.6 of Form S 3, in no event will we sell securities pursuant to this registration statement with a value of more than one third of the aggregate market value of the shares of common stock held by non affiliates in any 12 month period, so long as the aggregate market value of the shares of common stock held by non affiliates is less than $75,000,000. In the event that subsequent to the effective date of this registration statement, the aggregate market value of our outstanding shares of common stock held by non affiliates equals or exceeds $75,000,000, then the one third limitation on sales shall not apply to additional sales made pursuant to this registration statement. We have not sold any securities pursuant to General Instruction I.B.6 of Form S 3 during the 12 calendar months prior to, and including, the date of this registration statement.

Investing in our securities involves risks. Before buying our securities, you should refer to the risk factors included in our periodic reports, the applicable prospectus supplement relating to the offering and other information that we file with the Securities and Exchange Commission. See "Risk Factors" on page 4 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____ ___, 2017

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the United States Securities and Exchange Commission (the "SEC"), utilizing a "shelf" registration process, which allows us to sell the securities covered by this prospectus from time to time, together or separately, in one or more offerings up to an aggregate public offering price of $75,000,000.

On March 18, 2017, BRT Realty Trust ("Old BRT") consummated a conversion (the "Conversion") whereby it converted from a Massachusetts business trust to BRT Apartments Corp., a Maryland corporation. The Conversion was consummated pursuant to a plan of conversion dated as of December 8, 2016. At the effective time of the Conversion, each outstanding share of beneficial interest of Old BRT automatically converted into one share of common stock of BRT Apartments Corp.

As a result of the Conversion, we are the successor issuer to Old BRT pursuant to Rule 414 under the Securities Act. Pursuant to Rule 12g-3(a) under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), as the successor issuer to Old BRT, our shares are deemed registered under Section 12(b) of the Exchange Act. Our shares are listed on the New York Stock Exchange ("NYSE") under the symbol "BRT" in the same manner that shares of beneficial interest of Old BRT were listed on the NYSE.

This prospectus only provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a supplement to this prospectus that will contain specific information about the terms of that offering, including the number of securities, and the price at which, and the specific manner in which, those securities may be offered and sold. The prospectus supplement may also add to, update or change information contained in this prospectus. Before purchasing any securities, you should carefully read both this prospectus and any supplement, together with additional information described under the heading "Where You Can Find More Information."

You should rely only on the information contained or incorporated by reference in this prospectus and any prospectus supplement or amendment. We have not authorized any other person to provide you information different from that contained in this prospectus or incorporated by reference in this prospectus or any prospectus supplement or amendment. You should assume that the information appearing in this prospectus or any applicable prospectus supplement or the documents incorporated by reference herein or therein is accurate only as of the date on the cover page. Our business, financial condition, results of operations and prospects may have changed since that date.

Unless otherwise indicated or the context otherwise requires, all references to the "Company" ,"us", "we", "our" or terms of like import mean, collectively, BRT Apartments Corp. and BRT Realty Trust, our predecessor, and all of our subsidiaries included in our consolidated financial statements. The phrase "this prospectus" refers to this prospectus and the applicable prospectus supplement, unless the context otherwise requires. References to "securities" refer to the shares of common stock, shares of preferred stock, warrants and subscription rights offered by this prospectus, unless we specify or the context indicates or requires otherwise.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, proxy statements and other information with the SEC. Our electronic filings with the SEC are available to the public on the Internet at the SEC's web site at http://www.sec.gov. You may also read and copy any document we file with the SEC at the SEC's Public Reference Room located at 100 F Street, N.E., Washington, DC 20549. Please call the SEC at 800 SEC 0330 for more information about their Public Reference Room and their copy charges.

The SEC allows us to "incorporate by reference" the information we file with the SEC, which means that we can disclose information to you by referring you to those documents. Any information that we refer to in this manner is considered part of this prospectus. Any information that we file with the SEC after the date of this prospectus will automatically update and supersede the information contained in this prospectus.

We are incorporating by reference the following documents that we have previously filed with the SEC (Commission File No. 001 7172), except for any document or portion thereof "furnished" to the SEC pursuant to Item 2.02 or Item 7.01 of Form 8 K:

- Our Annual Report on Form 10 K for the year ended September 30, 2016, filed on December 13, 2016, including information incorporated by reference therein to our proxy statement/prospectus filed on January 20, 2017;

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- Our Quarterly Reports on Form 10 Q for the quarters ended December 31, 2016 and March 31, 2017, filed on February 8, 2017 and May 10, 2017, respectively;
- Our Current Reports on Form 8 K filed on December 13, 2016, February 6, 2017, February 7, 2017, March 15, 2017, March 20, 2017, April 19, 2017 and May 5, 2017; and
- The description of our stock included in Exhibit 99.1 to our Current Report on Form 8 K filed on March 20, 2017, including any subsequent amendments and reports filed for the purpose of updating such description.

All documents and reports filed by us with the SEC (other than Current Reports on Form 8 K furnished pursuant to Item 2.02 or Item 7.01 of Form 8 K, unless otherwise indicated therein) pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, after the date that the registration statement of which this prospectus is a part is first filed with the SEC and prior to the termination of this offering, shall be deemed incorporated by reference in this prospectus and shall be deemed to be a part of this prospectus from the date of filing of such documents and reports. Any statement in a document incorporated or deemed to be incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement in this prospectus or in any subsequently filed document or report incorporated or deemed to be incorporated by reference in this prospectus modifies or supersedes such statement. Any such statement so modified or superseded shall only be deemed to constitute a part of this prospectus as it is so modified or superseded.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon written or oral request of such person, a copy of any or all of the documents incorporated by reference in this prospectus but not delivered with the prospectus, other than exhibits, unless such exhibits specifically are incorporated by reference into such documents or this prospectus.

Requests for such documents should be addressed in writing or by telephone to: BRT Apartments Corp., 60 Cutter Mill Road, Suite 303, Great Neck, N.Y. 11021 or 516 466 3100, Att: Investor Relations.

WHO WE ARE

We are an internally managed real estate investment trust, also known as a REIT, that is primarily focused on the ownership, operation and development of multi-family properties. These activities are primarily conducted through joint ventures in which we typically have an 80% equity interest in the entity owning the property. At December 31, 2016, we own 30 multi-family properties located in 11 states with an aggregate of 8,624 units, including 271 units at a property in lease up stage, and a net book value of approximately $735.6 million. Most of our properties are located in the Southeast United States and Texas. We commenced our multi-family activities in March 2012.

For more than the past five years, we also engaged in two other principal business activities: (i) real estate lending; and (ii) the ownership, operation and development of commercial, mixed use and other real estate assets.

Our real estate lending activities involved originating and holding for investment short-term senior mortgage loans secured by commercial and multi-family real estate property in the United States. These lending activities decreased during the past five years (i.e., $0, $0, $5.0 million, $5.5 million and $70.3 million of loan originations in 2016, 2015, 2014, 2013 and 2012, respectively). As of November 1, 2014, we are no longer engaged in real estate lending.

We also own and operate other real estate assets. During the past several years, these other real estate assets primarily consisted of our interest in a consolidated joint venture, which we refer to as the Newark Joint Venture, which owned several properties (including development sites) in Newark, New Jersey. At September 30, 2015, the net book value of the real property included in our other real estate assets was $152.0 million, including the Newark Joint Venture's real estate assets of $141.4 million. On February 23, 2016, we sold all of our interest in the Newark Joint Venture for $16.9 million, and in the quarter ended March 31, 2016, recognized a $15.5 million gain on this sale. As a result of this sale, the $19.5 million mortgage loan owed to us by the Newark Joint Venture, which prior to such sale had been eliminated in consolidation, is reflected on our consolidated balance sheet as a real estate loan. During the quarter ended December 31, 2016, we received a $13.6 million principal paydown on this $19.5 million loan and received $2.6 million for all interest (current and deferred) due as of the date of such repayment. At December 31, 2016, the

outstanding principal balance on this loan is $5.9 million. The loan matures in June 2017, bears interest payable monthly, at a rate of 11% per year and is secured by several properties in Newark, New Jersey. At December 31, 2016, the net book value of our other real estate assets, including this loan, is $16.8 million.

We were organized as a business trust under the laws of the Commonwealth of Massachusetts in June 1972. On March 18, 2017, we converted our jurisdiction and form of organization to a Maryland corporation. Our address is 60 Cutter Mill

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Road, Suite 303, Great Neck, New York 11021, and our telephone number is 516-466-3100. Our website can be accessed at www.brtrealty.com, where copies of our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and other filings with the Securities and Exchange Commission, or SEC, can be obtained free of charge. These SEC filings are added to our website as soon as reasonably practicable.

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

This prospectus and the information incorporated by reference in this prospectus contain certain forward looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Exchange Act. We intend such forward looking statements to be covered by the safe harbor provision for forward looking statements contained in the Private Securities Litigation Reform Act of 1995 and include this statement for purposes of complying with these safe harbor provisions. Forward looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words “may,” “will,” “could,” “likely”, “should,” “plan”, “believe,” “expect,” “intend,” “anticipate,” “estimate,” “predict”, expressions or variations thereof. You should not place undo reliance on forward looking statements since they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, performance or achievements. Factors which may cause actual results to differ materially from current expectations and risks are described under “Risk Factors” and are set forth in our filings with the SEC. These risks and uncertainties include:

- 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 the slow economic recovery 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 leverage 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;

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- inflation risks;
- cybersecurity risks and cyber incidents;
- our ability to achieve our strategic goals; and
- other risks detailed from time-to-time in our reports filed with the SEC.

Any forward-looking statement we make in this 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. We have no duty to, and do not intend to, update or revise the forward-looking statements we make in this prospectus (including any information incorporated by reference into this prospectus) whether as a result of new information, future events or otherwise, except as required by law. 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.

RISK FACTORS

Before you invest in any of our securities, in addition to the other information in this prospectus and the applicable prospectus supplement, you should carefully consider the risk factors described below, the risk factors described under the heading “Risk Factors” contained in Part I, Item 1A in our most recent Annual Report on Form 10 K and any risk factors disclosed under the heading “Risk Factors” in Part II, Item 1A in any Quarterly Report on Form 10 Q that we file after our most recent Annual Report on Form 10 K, which are incorporated by reference into this prospectus and the applicable prospectus supplement, as the same may be updated from time to time by our future filings under the Exchange Act.

The risks and uncertainties we describe are not the only ones facing us. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business or operations. Any adverse effect on our business, financial condition or operating results could result in a decline in the value of the securities and the loss of all or part of your investment.

Certain provisions of our Articles of Incorporation, our Bylaws and Maryland law may inhibit a change in control that stockholders consider favorable and could also limit the market price of our common stock

Certain provisions of our Articles of Incorporation (the "Charter"), our Bylaws and Maryland law may impede, or prevent, a third party from acquiring control of us without the approval of our board of directors. These provisions:

- 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 our stock (such provisions being intended to, among other purposes, facilitate our compliance with certain requirements under the Internal Revenue Code of 1986, as amended (the "Code") relating to our qualification as a REIT under the Code);
- prevent our stockholders from amending the Bylaws;
- limit who may call special meetings of stockholders;
- establish advance notice and informational requirements and time limitations on any director nomination or proposal that a stockholder wishes to make at a meeting of stockholders;

- 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 our board of directors, which would otherwise permit holders of less than a majority of outstanding shares to elect one or more directors; and

- authorize our board of directors, without stockholder approval, to amend the Charter to increase or decrease the aggregate number of shares of our stock or the number of shares of stock of any class or series that we

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have 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 our common stock, including:

- "business combination" provisions that, subject to certain exceptions and limitations, prohibit certain business combinations between us and an "interested stockholder" (defined generally as any person who beneficially owns 10% or more of the voting power of our outstanding voting stock or an affiliate or associate of 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 our then outstanding voting stock) or an affiliate thereof for five years after the most recent date on which the stockholder becomes an interested stockholder, and thereafter impose two super-majority stockholder voting requirements on these combinations;

- "control share" provisions that provide that, subject to certain exceptions, holders of "control shares" of BRT (defined as voting shares which, when aggregated with other shares controlled by the stockholder, 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 our stockholders 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 our board of directors, without stockholder approval and regardless of what is currently provided in the Charter or the Bylaws, to implement certain corporate governance provisions. See "Certain Provisions of Maryland Law and of our Charter and Bylaws."

Upon consummation of the Conversion, we (1) exempted all business combinations between us and any other person, provided that each such business combination is first approved by our board of directors (including a majority of directors who are not affiliates or associates of such person), from the Maryland Business Combination Act and (2) opted out of the Maryland Control Share Acquisition Act.

Ownership of less than 6.0% of our outstanding shares or less than 6.0% of the aggregate outstanding shares of all classes and series of our stock could violate the restrictions on ownership and transfer in our 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 our shares will result in the loss of the economic benefit of such shares.

In order for us to qualify as a real estate investment trust under the Code, no more than 50% of the value of the outstanding shares of our 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 our qualification as a REIT under the Code, among other purposes, the 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 our outstanding shares of common stock, or more than 6.0% in value of the aggregate outstanding shares of all classes and series of our stock, which we refer to as the "ownership limits," unless our board of directors exempts the person from such ownership limit. In addition, the Charter prohibits any person from beneficially or constructively owning shares of our stock that would result in more than 50% of the value of the outstanding shares of our 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 us. The person that owned or acquired our stock in violation of the restrictions in the 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 our stock and the rights of stockholders whose shares of our stock have been transferred to the charitable trust, see "Description of Stock - Restrictions on Ownership and Transfer."

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Our 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 us, as of March 31, 2017, Gould Investors owns approximately 21.3% of the outstanding shares of common stock and, by virtue of the applicable attribution rules under the Code, one individual currently beneficially owns 24.5% of outstanding shares of common stock. As a result, the acquisition by each of four other individuals of 6.0% of our outstanding common stock, when combined with the ownership of our 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 shares of our common stock or otherwise increasing their percentage of ownership of our common stock, meaning that the amount of our 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 shares or our stock, or any other event occurs (including a repurchase of shares of our stock), that results in an individual beneficially or constructively owning 26.0% or more of the outstanding shares of our stock within the meaning of the Charter, the acquisition by four other individuals of 6.0% or less of our outstanding stock would violate the Five or Fewer Limit and, therefore, could cause the 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 our stock does not cause a violation of the Five or Fewer Limit or that your shares of our 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 shares of our stock within two days of such acquisitions, and all holders of our stock will be required to file reports of their acquisition of beneficial ownership (as defined in the Exchange Act) of more than 5% of our outstanding 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 our outstanding stock, ownership of five percent or less of our outstanding stock could still result in a violation of the Five or Fewer Limit and, therefore, cause newly-acquired stock in our company to 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 our 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.

USE OF PROCEEDS

Unless otherwise indicated in the applicable prospectus supplement, we anticipate that the net proceeds from the sale of the securities that we may offer under this prospectus will be used for (i) the acquisition of additional multi family properties (including equity investments in joint ventures that acquire such properties), (ii) other direct or indirect acquisitions of, or investments in, real estate and related assets, and (iii) general corporate purposes. General corporate purposes may include repayment of debt, capital expenditures and any other purposes that we may specify in the applicable prospectus supplement. If a material part of the net proceeds is used to repay indebtedness, we will set forth the interest rate and maturity of such indebtedness in a prospectus supplement, as required.

We will have significant discretion in the use of any net proceeds. Investors will be relying on the judgment of our management regarding the application of the proceeds from any sale of the securities. We may invest the net proceeds temporarily until we use them for their stated purpose.

DESCRIPTION OF STOCK

The following description is a summary of the material terms of our stock as set forth in our charter (the "Charter") and our bylaws (the "Bylaws") and the Maryland General Corporation Law (the "MGCL"). These documents may be amended from time to time. You should read the Charter and the Bylaws because they, not this description, will define your rights as a stockholder.

General

The Charter authorizes us 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 preferred stock, par value $0.01 per share. As of the close of business

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on March 31, 2017, approximately 14,040,560 shares of our common stock and no shares of our preferred stock are issued and outstanding.

Our Common Stock

Subject to the provisions of the Charter regarding the restrictions on ownership and transfer of our stock, except as may be otherwise specified in the Charter, each outstanding share of our common stock entitles the holder to one vote, and, except as may be provided with respect to any other class or series of our stock, the holders of shares of our common stock possess the exclusive voting power.

Subject to the preferential rights, if any, of holders of any other class or series of our stock and to the provisions of our Charter relating to the restrictions on ownership and transfer of our stock, holders of shares of our common stock are entitled to receive distributions when authorized by our board of directors and declared by us out of assets legally available for distribution to our stockholders and will be entitled to share ratably in assets legally available for distribution to our stockholders in the event of our liquidation, dissolution or winding up, after payment of or adequate provision for all of our known debts and liabilities.

Holders of shares of our 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 of our securities.

Our Preferred Stock

The Charter authorizes our board of directors to authorize the issuance from time to time of shares of stock of any class or series, including preferred stock. The Charter also authorizes our board of directors to classify and reclassify any unissued shares of our common stock or preferred stock into other classes or series of stock, including one or more classes or series of preferred stock, and authorizes us to issue the newly classified shares. Before authorizing the issuance of a new class or series of preferred stock, our board of directors must, subject to the provisions of the Charter regarding the restrictions on ownership and transfer of our stock, fix the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption for each class or series. Our board of directors also may increase or decrease the authorized number of shares of any class or series of our stock, including any class or series of our preferred stock, and may classify or reclassify any unissued shares of a class or series of our stock by fixing or altering from time to time the terms of such shares.

These actions may be taken without stockholder approval unless such approval is required by applicable law, the terms of any other class or series of our stock or the rules of any stock exchange or automated quotation system on which any shares of our stock are listed or traded. Therefore, our board of directors could authorize the issuance of shares of preferred stock that have priority over our 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 our common stock or otherwise be in the best interest of our stockholders.

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 Charter authorizes our board of directors, with the approval of a majority of the entire board and without stockholder approval, to amend our Charter to increase or decrease the aggregate number of

shares of stock that we are authorized to issue or the number of shares of any class or series stock that we are authorized to issue. In addition, the Charter authorizes our board of directors to classify or reclassify unissued shares of common or preferred stock and to authorize us to issue such classified or reclassified shares.

Restrictions on Ownership and Transfer

In order for us to qualify as a REIT under the Code, our 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 our 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.

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The Charter includes restrictions concerning the ownership and transfer of shares of our stock. Our board of directors may, from time to time, grant waivers from these restrictions, in its sole discretion. The relevant sections of the 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, more than 6.0%, in value or in number of shares, whichever is more restrictive, of the outstanding shares of our common stock (the "common stock ownership limit") or 6.0% in value of the outstanding shares of all classes or series of shares of our 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 our stock as described below, would beneficially own or constructively own shares of our 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 our stock as a "prohibited owner."

The applicable constructive ownership rules under the Code are complex and may cause shares of our 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 our common stock, or less than 6.0% in value of the outstanding shares of all classes and series of our stock (or the acquisition by an individual or entity of an interest in an entity that owns, beneficially or constructively, shares of our stock), could, nevertheless, cause that individual or entity, or another individual or entity, to own beneficially or constructively shares of our stock in excess of the ownership limits.

Our board of directors, in its sole discretion, may exempt, prospectively or retroactively, a person or entity from the ownership limits and may establish a different limit on ownership (the "excepted holder limit") for any such person. As a condition of granting the waiver or establishing the excepted holder limit, our board of directors may require representations and undertakings from the person requesting the exception as our 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 our status as a REIT under the Code, in form and substance satisfactory to our board of directors, in its sole discretion. Our 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. Our board of directors granted an exception for Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould and has granted an exception and created an excepted holder limit for certain holders of our common stock who owned shares of beneficial interest in BRT Realty Trust, a Massachusetts business trust, in excess of the ownership limits before the completion of the conversion of our company to a Maryland corporation.

As discussed above, in order to qualify as a REIT, not more than 50% of the value of the outstanding shares of our 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, the Charter prohibits any person from beneficially or constructively owning shares of our stock that would result in more than 50% in value of the outstanding shares of our 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 Charter) by the four other largest stockholders.

Gould Investors, Fredric H. Gould, Matthew J. Gould and Jeffrey A. Gould are required by the Exchange Act and regulations promulgated thereunder to report, with certain exceptions, their acquisition of our stock within two days of

such acquisitions, and all holders of our 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 shares of our stock no less frequently than annually. However, beneficial ownership for purposes of the 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 shares of our stock, ownership by four individuals of five percent or less of the outstanding shares of our stock (which would not require public disclosure) could still result in a violation of the Five or Fewer Limit and, therefore, cause newly-acquired shares of our 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 our 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, our board of directors may from time to time increase or decrease the common stock 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

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beneficially own, in the aggregate, more than 49.9% in value of the outstanding shares of our stock or we 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 our common stock or of our 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 our common stock or our shares of our stock of all classes and series, as applicable, equals or falls below the decreased ownership limit, but any further acquisition of shares of our common stock or shares of our stock of all classes or series, as applicable, will violate the decreased ownership limit.

The Charter further prohibits:

- any person from beneficially or constructively owning, applying certain attribution rules of the Code, shares of our stock that would result in our 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 us to fail to qualify as a REIT under the Code; and

- any person from transferring shares of our stock if the transfer would result in shares of our 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 our stock that will or may violate the ownership limits or any of the other restrictions on ownership and transfer of our stock described above, or who would have owned shares of our stock transferred to the trust as described below, must immediately give written notice to us of such event or, in the case of an attempted or proposed transaction, give us at least 15 days' prior written notice and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT under the Code.

If any transfer of shares of our stock would result in shares of our 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 our stock or any other event would otherwise result in any person violating the ownership limits or an excepted holder limit established by our board of directors, or in our 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 us, 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 before 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 a violation of the applicable ownership limits or our 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 our otherwise failing to qualify as a REIT under the Code, then the 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 our stock held in the trust will be issued and outstanding shares. The prohibited owner will not benefit economically from ownership of any shares of our 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 our 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 we discover that the shares have been transferred to a trust as described above must be repaid by the recipient to the trustee upon demand. 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 prohibited owner before our 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 we have already taken irreversible corporate action, then the trustee may not rescind and recast the vote.

Shares of our stock transferred to the trustee are deemed offered for sale to us, or our 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 we accept, or our designee accepts, such offer. We may reduce the amount so payable by the amount of any distribution that we made to the prohibited owner before we 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 we may pay the amount of any such reduction to the trustee for distribution to the charitable beneficiary. We have the right to accept such offer until the trustee has sold the shares of our stock held in the trust as discussed below. Upon a sale to us, the interest of the

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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 we do not buy the shares, the trustee must, within 20 days of receiving notice from us 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 our 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 we paid to the prohibited owner before we 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, before our discovery 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 must be paid to the trustee upon demand. The prohibited owner has no rights in the shares held by the trustee.

In addition, if our board of directors determines that a transfer or other event has taken place that would violate the restrictions on ownership and transfer of our stock described above, our board of directors may take such action as it deems advisable to refuse to give effect to or to prevent such transfer, including causing us to redeem shares of our stock, refusing to give effect to the transfer on our 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 our stock, within 30 days after the end of each taxable year, must give us written notice stating the stockholder's name and address, the number of shares of each class and series of our stock that the stockholder beneficially owns and a description of the manner in which the shares are held. Each such owner must provide to us in writing such additional information as we may request in order to determine the effect, if any, of the stockholder's beneficial ownership on our 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 our stock and any person or entity (including the stockholder of record) who is holding shares of our stock for a beneficial owner or constructive owner must, on request, provide to us such information as we may request in order to determine our 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.

Any one or all of the foregoing restrictions on ownership and transfer of our stock will not apply if our board of directors determines that it is no longer in our 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 us to continue to qualify as a REIT under the Code.

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

Transfer Agent and Registrar

The transfer agent and registrar for our shares of common stock is American Stock Transfer & Trust Co., LLC, New York.

DESCRIPTION OF WARRANTS

The following paragraphs constitute a general description of the terms of the warrants we may issue from time to time. Particular terms of any warrants we offer will be described in the prospectus supplement relating to such warrants. The description in the applicable prospectus supplement of any warrants we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable warrant certificate or warrant agreement, which will be filed with the SEC if we offer warrants. For more information on how you can obtain copies of any warrant certificate or warrant agreement

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if we offer warrants, see “Where You Can Find Additional Information” on page 1 of this prospectus. We urge you to read the applicable warrant certificate, warrant agreement and any applicable prospectus supplement in their entirety.

General

We may issue warrants to purchase our equity securities. We may issue warrants independently or together with any other offered securities. The warrants may be attached to or separate from those offered securities. We may issue the warrants under warrant agreements to be entered into between us and a transfer agent or bank or trust company to be named in the applicable prospectus supplement, as warrant agent, all as described in the applicable prospectus supplement. Any warrant agent will act solely as our agent in connection with the warrants and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

The prospectus supplement relating to any warrants that we may offer will contain the specific terms of the warrants. These terms may include the following:

- the title of the warrants;
- the designation, amount and terms of the securities for which the warrants are exercisable;
- the designation and terms of the other securities, if any, with which the warrants are to be issued and the number of warrants issued with each other security;
- the price or prices at which the warrants will be issued;
- the aggregate number of warrants;
- any provisions for adjustment of the number or amount of securities receivable upon exercise of the warrants or the exercise price of the warrants;
- the price or prices at which the securities purchasable upon exercise of the warrants may be purchased;
- the date on which the right to exercise the warrants will commence, and the date on which the right will expire;
- if applicable, the date on and after which the warrants and the securities purchasable upon exercise of the warrants will be separately transferable;
- if applicable, a discussion of certain material U.S. federal income tax considerations applicable to the warrants;
- any other terms of the warrants, including terms, procedures and limitations relating to the redemption, exchange and exercise of the warrants;
- the maximum or minimum number of warrants that may be exercised at any time; and
- information with respect to book entry procedures, if any.

Exercise of Warrants

Each warrant will entitle the holder of warrants to purchase for cash the amount of equity securities at the exercise price stated or determinable in the prospectus supplement for the warrants. Warrants may be exercised at any time up to the close of business on the expiration date shown in the applicable prospectus supplement, unless otherwise specified in such prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void. Warrants may be exercised as described in the applicable prospectus supplement. When the warrant holder makes the payment and properly completes and signs the warrant certificate at the corporate trust office of the warrant agent or any other office indicated in the prospectus supplement, we will, as soon as possible, forward the equity securities that the warrant holder has purchased. If the warrant holder exercises the warrant for less than all of the warrants represented by the warrant certificate, we will issue a new warrant certificate for the remaining warrants.

DESCRIPTION OF SUBSCRIPTION RIGHTS

The following paragraphs constitute a general description of the terms of the subscription rights we may issue from time to time. Particular terms of any subscription rights we offer will be described in the prospectus supplement relating to such subscription rights. The description in the applicable prospectus supplement of any subscription rights we offer will not necessarily be complete and will be qualified in its entirety by reference to the applicable subscription rights certificate or

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subscription rights agreement, which will be filed with the SEC if we offer subscription rights. For more information on how you can obtain copies of any subscription rights certificate or subscription rights agreement if we offer subscription rights, see “Where You Can Find Additional Information” on page 1 of this prospectus. We urge you to read the applicable subscription rights certificate, subscription rights agreement and any applicable prospectus supplement in their entirety.

We may issue subscription rights to purchase our common shares, preferred shares or other securities. These subscription rights may be issued independently or together with any other security offered hereby and may or may not be transferable by the securityholder receiving the subscription rights in such offering. In connection with any offering of subscription rights, we may enter into a standby arrangement with one or more underwriters or other purchasers pursuant to which the underwriters or other purchasers may be required to purchase any or a portion of the securities remaining unsubscribed for after such offering.

The applicable prospectus supplement will describe the specific terms of any offering of subscription rights for which this prospectus is being delivered, including the following:

- the price, if any, for the subscription rights;
- the exercise price payable for each common share, preferred share or other security upon the exercise of the subscription rights;
- the number of subscription rights issued to each securityholder;
- the number and terms of the common shares, preferred shares or other securities which may be purchased per each subscription right;
- the extent to which the subscription rights are transferable;
- any other terms of the subscription rights, including the terms, procedures and limitations relating to the exchange and exercise of the subscription rights;
- the date on which the right to exercise the subscription rights shall commence, and the date on which the subscription rights shall expire;
- the extent to which the subscription rights may include an over subscription privilege with respect to unsubscribed securities; and
- if applicable, the material terms of any standby underwriting or purchase arrangement entered into by us in connection with the offering of subscription rights.

CERTAIN PROVISIONS OF MARYLAND LAW AND OF OUR CHARTER AND BYLAWS

The following description is a summary of the material provisions of our Charter and Bylaws and specified provisions of the Maryland General Corporation Law, or MGCL. This summary does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all of the provisions of the Charter, the Bylaws and the MGCL. These documents may be amended from time-to-time. You should read each of these documents because they, not this description, will define your rights as stockholders. See also "Description of Stock."

Our Board of Directors

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

The 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. The terms of the Class I, Class II, and Class III directors expire at our annual meetings of stockholders in 2018, 2019 and 2020, respectively, and until their successors are duly elected and

qualify.

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Election of Directors; Removals; Vacancies

Holders of shares of common stock have no right to cumulative voting in the election of directors. Under the Charter and the Bylaws, each of our directors is elected by a majority of the votes cast by the holders of our common stock in the election of such director, except in a contested election. In a contested election, directors are elected by a plurality of the votes cast at a meeting of stockholders 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 stockholders at which directors are to be elected, there are more nominees for election than the number of directors to be elected. Pursuant to our corporate governance guidelines, any nominee for election as a director who is an incumbent director but who is not elected by the vote required by the Bylaws, and with respect to whom no successor has been elected, must promptly tender his or her offer to resign to our board of directors for its consideration. The Nominating and Corporate Governance Committee (the "Nominating Committee") of our board of directors will consider such offer and recommend to our 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, our board of directors will decide whether to accept the offer to resign. Our board of directors will promptly and publicly disclose its decision. The nominee may address the Nominating Committee and/or our board of directors, but may not be present during deliberations or voting on whether to accept the nominee's offer to resign. If the offer to resign is not accepted, the director will continue to serve until the next annual meeting of stockholders and until the director's successor is duly elected and qualifies or until the director's earlier resignation or removal. The Nominating Committee and our board of directors may consider any factors they deem relevant in deciding whether to accept a director's resignation.

Pursuant to the Charter, we elected to be subject to a 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 our board of directors in setting the terms of any class or series of stock, any and all vacancies on our 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.

The 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 stockholders 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 us through bad faith or active and deliberate dishonesty. This provision, when coupled with the exclusive power of our board of directors to fill vacancies on its board of directors, precludes stockholders from (1) removing incumbent directors between annual meetings except upon a substantial affirmative vote and for cause and (2) filling the vacancies created by any such removal with their own nominees.

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 stockholder, or an affiliate of such an interested stockholder, are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Maryland law defines an interested stockholder 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 before 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 stockholder if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. 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.

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:

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- 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 stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

These super-majority approval requirements do not apply if, among other conditions, the corporation's common stockholders 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 stockholder 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 before the interested stockholder becomes an interested stockholder.

Pursuant to the statute, we elected to exempt from the Maryland Business Combination Act all business combinations between us and any other person, provided that such business combination is first approved by our 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 us that may or may not be in the best interest of our stockholders, without compliance by us with the super-majority vote requirements and other provisions of the statute.

We cannot assure you that our 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 stockholder 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 stockholders 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 stockholders 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 stockholders 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 stockholders meeting and the acquirer becomes entitled to exercise or direct the exercise of a majority of all voting power, all other stockholders 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.

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As permitted by the MGCL, the 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 our 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 Charter provides that, except as may be provided by our board of directors in setting the terms of any class or series of stock, we are subject to the provisions of Subtitle 8 relating to the filling of vacancies on our board of directors. Through provisions in the Charter and the Bylaws unrelated to Subtitle 8, we already (1) have a classified board, (2) require a two-thirds vote for the removal of any director from the board, which removal must be for cause, (3) vest in our board of directors the exclusive power to fix the number of directorships, subject to limitations set forth in the Charter and the Bylaws, and (4) require the request of stockholders 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 stockholders.

Approval of Extraordinary Actions; Amendments to the Charter and the Bylaws

Under the MGCL, a Maryland corporation generally may not dissolve, merge or consolidate with, or convert into, 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 stockholders 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 Charter provides that these actions, other than certain amendments to the Charter as described below, must be approved by a majority of all of the votes entitled to be cast on the matter.

The Charter generally may be amended only if such amendment is declared advisable by our board of directors and approved by the affirmative vote of stockholders 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 our stock; and (vi) the vote required to amend any of the foregoing provisions.

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

Meetings of Stockholders

Under the Bylaws, annual meetings of stockholders will be held each year at a date and time determined by our board of directors. The Bylaws provide that (i) special meetings of stockholders may be called only by our chairman, chief executive officer, president or our board of directors; (ii) subject to the satisfaction of certain procedural and informational requirements by the stockholders requesting the meeting, a special meeting of stockholders to act on any matter that may properly be considered at a meeting of stockholders must also be called by our secretary upon the written request of stockholders entitled to

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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.

Advance Notice of Director Nominations and New Business

The Bylaws provide that nominations of individuals for election as directors and proposals of business to be considered by stockholders at any annual meeting may be made only (1) pursuant to our notice of the meeting, (2) by or at the direction of our board of directors or (3) by any stockholder who was a stockholder of record at the record date set by our board of directors for the purpose of determining stockholders entitled to vote at the meeting, at the time of giving the notice required by our 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 Bylaws. Stockholders generally must provide notice to our 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 our proxy statement is released to the stockholders for the preceding year's annual meeting of stockholders.

Only the business specified in the notice of the meeting may be brought before a special meeting of stockholders. Nominations of individuals for election as directors at a special meeting of stockholders may be made only (1) by or at the direction of our board of directors, or (2) if the special meeting has been called in accordance with the Bylaws for the purpose of electing directors, by any stockholder who was a stockholder of record at the record date set by our board of directors for purposes of determining stockholders entitled to vote at the meeting, at the time of giving the notice required by the 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 Bylaws. Stockholders generally must provide notice to our 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 our board of directors to be elected at the meeting.

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

Exclusive Forum

The Bylaws provide that, unless our 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 our directors, officers or other employees to us or to our stockholders, (c) any action asserting a claim against us or any of our directors, officers or other employees pursuant to the MGCL, the Charter or the 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).

Qualification as a REIT

The Charter provides that our board of directors may revoke or otherwise terminate our election as to be taxed a REIT under the Code, without approval of our stockholders, if it determines that it is no longer in our best interests to continue to be qualified, or attempt to qualify, as a REIT under the Code.

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 stockholders 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 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 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

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

We entered into customary indemnification agreements with our directors and executive officers that will require us, among other things, to indemnify our 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.

We maintain directors' and officers' liability insurance which will indemnify our 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 us 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.

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FEDERAL INCOME TAX CONSIDERATIONS

This section summarizes certain U.S. federal income tax issues that you, as a prospective investor, may consider relevant. Because this section is a summary, it does not address all of the tax issues that may be important to you. In addition, this section does not address the tax issues that may be important to certain types of prospective investors that are subject to special treatment under U.S. federal income tax laws, including, without limitation, insurance companies, tax exempt organizations (except to the extent discussed in "Taxation of Tax Exempt Stockholders," below), financial institutions or broker dealers, and non U.S. individuals and foreign corporations (except to the extent discussed in "Taxation of Non U.S. Stockholders," below).

The following discussion describes certain of the material U.S. federal income tax considerations relating to our taxation as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"), and the ownership and disposition of shares of our capital stock.

Because this summary is only intended to address certain of the material U.S. federal income tax considerations relating to the ownership and disposition of shares of our capital stock, it may not contain all of the information that may be important to you. As you review this discussion, you should keep in mind that:

- the tax consequences to you may vary depending on your particular tax situation;
- you may be a person that is subject to special tax treatment or special rules under the Code (e.g., regulated investment companies, insurance companies, tax exempt entities, financial institutions or broker dealers, expatriates, persons subject to the alternative minimum tax and partnerships, trusts, estates or other pass through entities) that the discussion below does not address;
- the discussion below does not address any state, local or non U.S. tax considerations; and
- the discussion below deals only with stockholders that hold shares of our capital stock as a "capital asset," within the meaning of Section 1221 of the Code.

WE URGE YOU TO CONSULT WITH YOUR OWN TAX ADVISORS REGARDING THE SPECIFIC TAX CONSEQUENCES TO YOU OF ACQUIRING, OWNING AND SELLING SHARES OF OUR CAPITAL STOCK, INCLUDING THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF ACQUIRING, OWNING AND SELLING SHARES OF OUR CAPITAL STOCK IN YOUR PARTICULAR CIRCUMSTANCES AND POTENTIAL CHANGES IN APPLICABLE LAWS.

The information contained in this section is based on the Code, final, temporary and proposed Treasury Regulations promulgated thereunder, the legislative history of the Code, current administrative interpretations and practices of the Internal Revenue Service (the "IRS") (including in private letter rulings and other non binding guidance issued by the IRS), as well as court decisions all as of the date hereof. No assurance can be given that future legislation, Treasury Regulations, administrative interpretations and court decisions will not significantly change current law or adversely affect existing interpretations of current law, or that any such change would not apply retroactively to transactions or events preceding the date of the change. We have not obtained, and do not intend to obtain, any rulings from the IRS concerning the U.S. federal income tax treatment of the matters discussed below. Furthermore, neither the IRS nor any court is bound by any of the statements set forth herein and no assurance can be given that the IRS will not assert any position contrary to statements set forth herein or that a court will not sustain such position.

Taxation of the Company as a REIT

Dentons US LLP ("Dentons"), which has acted as our tax counsel, has reviewed the following discussion and is of the opinion that, to the extent that it constitutes matters of law or legal conclusions, it fairly summarizes the material U.S. federal income tax considerations relevant to our status as a REIT under the Code and to investors in shares of our capital stock. The following summary of certain U.S. federal income tax considerations is based on current law, is for general information only, and is not intended to be (and is not) tax advice.

It is the opinion of Dentons that we have been organized and operated in conformity with the requirements for qualification and taxation as a REIT under the Code, commencing with our taxable year ended December 31, 2006 through and including our taxable year ended December 31, 2016, and that our current and proposed method of

operation will enable us to continue to meet the requirements for qualification and taxation as a REIT under the Code. We emphasize that this opinion of Dentons is based on various assumptions, certain representations and statements made by us as to factual matters and is

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conditioned upon such assumptions, representations and statements being accurate and complete. Dentons has advised us that it is not aware of any facts or circumstances that are not consistent with these representations, assumptions and statements. Potential purchasers of shares of our capital stock should be aware, however, that opinions of counsel are not binding upon the IRS or any court. In general, our qualification and taxation as a REIT depends upon our ability to satisfy, through actual operating results, distribution, diversity of share ownership, and other requirements imposed under the Code, none of which has been, or will be, reviewed by Dentons. Accordingly, while we intend to continue to qualify to be taxed as a REIT under the Code no assurance can be given that the actual results of our operations for any particular taxable year has satisfied, or will satisfy, the requirements for REIT qualification.

Commencing with our taxable year ended December 31, 1972, we elected to be taxed as a REIT under the Code. We believe that commencing with our taxable year ended December 31, 1972, we have been organized and have operated in such a manner so as to qualify as a REIT under the Code, and we intend to continue to operate in such a manner. However, we cannot assure you that we will, in fact, continue to operate in such a manner or continue to so qualify as a REIT under the Code.

If we qualify for taxation as a REIT under the Code, we generally will not be subject to a corporate level tax on our net income that we distribute currently to our stockholders. This treatment substantially eliminates the "double taxation" (i.e., a corporate level tax and stockholder level tax) that generally results from investment in a regular subchapter C corporation. However, we will be subject to U.S. federal income tax as follows:

- First, we would be taxed at regular corporate rates on any of our undistributed REIT taxable income, including our undistributed net capital gains (although, to the extent so designated by us, stockholders would receive an offsetting credit against their own U.S. federal income tax liability for U.S. federal income taxes paid by us with respect to any such gains).
- Second, under certain circumstances, we may be subject to the "corporate alternative minimum tax" on our items of tax preference.
- Third, if we have (a) net income from the sale or other disposition of "foreclosure property," which is, in general, property acquired on foreclosure or otherwise on default on a loan secured by such real property or a lease of such property, which is held primarily for sale to customers in the ordinary course of business or (b) other nonqualifying income from foreclosure property, we will be subject to tax at the highest corporate rate on such income.
- Fourth, if we have net income from prohibited transactions such income will be subject to a 100% tax. Prohibited transactions are, in general, certain sales or other dispositions of property held primarily for sale to customers in the ordinary course of business other than foreclosure property.
- Fifth, if we should fail to satisfy the annual 75% gross income test or 95% gross income test (as discussed below), but nonetheless maintain our qualification as a REIT under the Code because certain other requirements have been met, we will have to pay a 100% tax on an amount equal to (a) the gross income attributable to the greater of (i) 75% of our gross income over the amount of gross income that is qualifying income for purposes of the 75% test, and (ii) 95% of our gross income (90% for taxable years beginning on or before October 22, 2004) over the amount of gross income that is qualifying income for purposes of the 95% test, multiplied by (b) a fraction intended to reflect our profitability.
- Sixth, if we should fail to distribute during each calendar year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year, and (iii) any undistributed taxable income required to be distributed from prior years, we would be subject to a 4% excise tax on the excess of such required distribution over the amount actually distributed by us.
- Seventh, if we were to acquire an asset from a corporation that is or has been a subchapter C corporation in a transaction in which the basis of the asset in our hands is determined by reference to the basis of the asset in the hands of the subchapter C corporation, and we subsequently recognize gain on the disposition of the asset within the five year period beginning on the day that we acquired the asset, then we will have to pay tax on the built in gain at the highest regular corporate rate. The results described in this paragraph assume that no election will be made under Treasury Regulations Section 1.337(d) 7 for the subchapter C corporation to be subject to an immediate tax when the asset is acquired.

- Eighth, for taxable years beginning after December 31, 2000, we could be subject to a 100% tax on certain payments that we receive from one of our taxable REIT subsidiaries ("TRSs"), or on certain expenses deducted by

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one of our TRSs, if the economic arrangement between us, the TRS and the tenants at our properties are not comparable to similar arrangements among unrelated parties.

- Ninth, if we fail to satisfy a REIT asset test, as described below, during our 2005 and subsequent taxable years, due to reasonable cause and we nonetheless maintain our REIT qualification under the Code because of specified cure provisions, we 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 us to fail such test.
- Tenth, if we fail to satisfy any provision of the Code that would result in our 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) during our 2005 and subsequent taxable years and the violation is due to reasonable cause, we may retain our REIT qualification but will be required to pay a penalty of $50,000 for each such failure.
- Eleventh, we may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record keeping requirements intended to monitor our compliance with rules relating to the composition of a REIT's stockholders.
- Finally, the earnings of our lower tier entities that are subchapter C corporations, including TRSs but excluding our QRSs (as defined below), are subject to federal corporate income tax.

In addition, we may be subject to a variety of taxes, including payroll taxes and state, local and foreign income, property and other taxes on our assets and operations. We could also be subject to tax in situations and on transactions not presently contemplated.

Requirements for REIT Qualification-In General

To qualify as a REIT under the Code, we must elect to be treated as a REIT and must satisfy the annual gross income tests, the quarterly asset tests, distribution requirements, diversity of share ownership and other requirements imposed under the Code. In general, the Code defines a REIT as a corporation, trust or association:

(1) that is managed by one or more trustees or directors;

(2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest;

(3) that would otherwise be taxable as a domestic corporation, but for Sections 856 through 859 of the Code;

(4) that is neither a financial institution nor an insurance company to which certain provisions of the Code apply;

(5) the beneficial ownership of which is held by 100 or more persons;

(6) during the last half of each taxable year, not more than 50% in value of the outstanding capital stock of which is owned, directly or constructively, by five or fewer individuals, as defined in the Code to include certain entities;

(7) that uses a calendar year for federal income tax purposes and complies with the recordkeeping requirements of the federal income tax laws; and

(8) that meets certain other tests, described below, regarding the nature of its income and assets.

The Code provides that the requirements (1) (4), (7) and (8) above must be met during the entire taxable year and that requirements (5) and (6) above do not apply to the first taxable year for which a REIT election is made and, thereafter, requirement (5) must be met 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. For purposes of requirement (6) above, generally (although subject to certain exceptions that should not apply with respect to us), any stock held by a trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code is treated as not held by the trust itself but directly by the trust beneficiaries in proportion to their actuarial interests in the trust.

We believe that we have satisfied the requirements above for REIT qualification. In addition, our Declaration of Trust currently includes restrictions regarding the ownership and transfer of shares of our capital stock, which restrictions are intended to assist us in satisfying some of these requirements (and, in particular requirements (5) and (6) above). The ownership and transfer restrictions pertaining to shares of our capital stock are described in the prospectus under the heading and "Provisions of our Declaration of Trust, Bylaws and Massachusetts Law Restrictions on Ownership

and Transfer" and "-Restrictions on Acquisition of Control."

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In applying the REIT gross income and asset tests, all of the assets, liabilities and items of income, deduction and credit of a corporate subsidiary of a REIT that is a “qualified REIT subsidiary” (as defined in Section 856(i)(2) of the Code) (&#8