

BRT REALTY TRUST  
Form S-8  
June 11, 2009

As filed with the Securities and Exchange Commission on June 11, 2009

Registration No. 333-

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

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

Massachusetts  
(State or Other Jurisdiction of Incorporation or Organization)

13-2755856  
(IRS Employer  
Identification Number)

60 CUTTER MILL ROAD, SUITE 303  
GREAT NECK, NEW YORK 11021  
(Address of Principal Executive Offices) (Zip Code)

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BRT REALTY TRUST 2009 INCENTIVE PLAN  
(Full Title of the Plan)

Mark H. Lundy, Esq.  
Senior Vice President  
BRT Realty Trust  
60 Cutter Mill Road  
Great Neck, New York 11021  
(Name and Address of Agent for Service)

516-466-3100  
(Telephone Number, Including Area Code, of Agent for Service)

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Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer,

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or a smaller reporting company. See definition of “large accelerated filer,” “accelerated filer” and “small reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

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

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)(2)	Proposed maximum offering price per share(3)	Proposed maximum aggregate offering price(3)	Amount of registration fee(3)
Common Shares of Beneficial Interest, par value \$3.00 per share	492,210	\$ 3.57	\$ 1,757,190	\$ 98.05

- (1) This registration statement registers 492,210 of the registrant’s common shares of beneficial interest, par value \$3.00 per share, authorized for issuance under the registrant’s 2009 Incentive Plan that have not yet been issued under such plan.
- (2) This registration statement shall also cover any of the registrant’s common shares which become issuable under the registrant’s 2009 Incentive Plan by reason of any share dividend, share split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the registrant’s outstanding common shares.
- (3) Estimated solely for the purpose of calculating the registration fee. Such estimate has been calculated pursuant to Rule 457(h) under the Securities Act and is based upon the average of the high and low price of the common shares of beneficial interest of BRT Realty Trust as reported on the New York Stock Exchange on June 9, 2009.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

All information required by Part I of Form S-8 to be contained in the prospectus is omitted from this registration statement in accordance with Rule 428 under the Securities Act of 1933, as amended (the "Securities Act"), and the introductory note to Part I of Form S-8.

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PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents are hereby incorporated by reference in this Registration Statement:

- The Annual Report on Form 10-K filed by BRT Realty Trust (the “Registrant”) for the fiscal year ended September 30, 2008, including information incorporated by reference therein to its Definitive Proxy Statement filed on January 28, 2009;
- The Registrant’s Quarterly Reports on Form 10-Q for the quarters ended December 31, 2008 and March 31, 2009, filed on February 6, 2009 and May 8, 2009, respectively;
- The Registrant’s Current Reports on Form 8-K filed on October 2, 2008, December 8, 2008, December 18, 2008, December 24, 2008, May 8, 2009, June 1, 2009 and June 9, 2009;
- The description of the Registrant’s shares contained in its Registration Statement on Form 8-A, filed on December 10, 1987 (File No. 001-07172), as updated by the description of its capital stock included in its Current Report on Form 8-K, filed on September 10, 2004, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant pursuant to Section 13(a), 13(c), 14 and 15(d) of the Exchange Act (other than portions of those documents furnished or otherwise not deemed to be filed), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents.

Any statement contained in a document incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated by reference herein modified or superseded such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Simeon Brinberg, Esq., who is providing an opinion on the legality of the common shares being registered hereby, is Senior Counsel of the Registrant. As an officer of the Registrant, Mr. Brinberg participates in benefit plans of the Registrant, on the same basis as other similarly eligible officers, pursuant to which he owns or has restricted shares, options or other rights to acquire an aggregate of less than 1% of the Registrant’s outstanding common shares. Mr. Brinberg is eligible to participate in the 2009 Incentive Plan.

Item 6. Indemnification of Directors and Officers.

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

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All of the Registrant's directors and officers are covered by insurance policies maintained by the Registrant against certain liabilities for actions taken in their capacities as such, including liabilities under the Securities Act.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

See Exhibit Index attached hereto.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended (the "Securities Act"), each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, BRT Realty Trust certifies that it has reasonable grounds to believe it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement or amendment thereto to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York, on June 9, 2009.

BRT REALTY TRUST  
(Registrant)

By */s/* Simeon Brinberg  
Simeon Brinberg  
Senior Vice President

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, each of the undersigned constitutes and appoints Simeon Brinberg, David W. Kalish and Mark H. Lundy, and each of them, as attorneys-in-fact and agents, with full power of substitution and resubstitution, for and in the name, place and stead of the undersigned, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the undersigned might or could do in person, hereby ratifying and confirming all that each of said attorney-in-fact or substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement or amendment thereto has been signed by the following persons in the capacities indicated on June 9, 2009.

Signatures	Title
<i>/S/</i> Fredric H. Gould Fredric H. Gould	Chairman of the Board of Trustees
<i>/S/</i> Jeffrey A. Gould Jeffrey A. Gould	Chief Executive Officer, President and Trustee (Principal Executive Officer)
<i>/S/</i> Alan H. Ginsburg Alan H. Ginsburg	Trustee
<i>/S/</i> Louis C. Grassi Louis C. Grassi	Trustee
<i>/s/</i> Matthew J. Gould Matthew J. Gould	Trustee
<i>/S/</i> Gary Hurand Gary Hurand	Trustee

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/S/ Jeffrey Rubin  
Jeffrey Rubin

Trustee

/S/ Jonathan H. Simon  
Jonathan H. Simon

Trustee

/S/ George Zweier  
George Zweier

Vice President and Chief Financial Officer  
(Principal Financial Officer and Principal  
Accounting  
Officer)

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EXHIBIT INDEX

Exhibit Number	Description of Document
4.1	BRT Realty Trust 2009 Incentive Plan (incorporated by reference to Exhibit A to BRT Realty Trust's Proxy Statement on Schedule 14A filed on January 28, 2009)
5.1*	Opinion of Simeon Brinberg with respect to the legality of the securities being registered
23.1*	Consent of Simeon Brinberg (included in the opinion filed as Exhibit 5.1)
23.2*	Consent of Ernst & Young LLP

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\* Filed herewith

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