

Mirati Therapeutics, Inc.  
Form SC 13D/A  
February 02, 2015

**SECURITIES AND EXCHANGE COMMISSION**

**WASHINGTON, DC 20549**

**SCHEDULE 13D**

**Under the Securities Exchange Act of 1934**

**(Amendment No. 1)**

**Mirati Therapeutics, Inc.**

**(Name of Issuer)**

**Common Stock, \$0.001 par value**

**(Title of Class of Securities)**

**60468T105**

**(CUSIP Number)**

**David A. Brown**

**Alston & Bird LLP**

**950 F Street, N.W.**

**Washington, DC 20004-1404**

**(202) 756-3463**

**(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)**

**January 29, 2015**

**(Date of Event Which Requires Filing of this Statement)**

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box “

CUSIP No. 60468T105

SCHEDULE 13D/A

Page 2 of 12 Pages

1 NAME OF REPORTING PERSONS

Boxer Capital, LLC  
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☒ (b) ☐  
3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

WC  
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

..  
6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware  
NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 0  
8 SHARED VOTING POWER

OWNED BY

EACH

2,264,810\*  
REPORTING 9 SOLE DISPOSITIVE POWER

PERSON

WITH

0  
10 SHARED DISPOSITIVE POWER

2,264,810\*

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

2,264,810\*

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions)

..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

14.1%\*\*

14 TYPE OF REPORTING PERSON (See Instructions)

OO

\* = This number includes 264,078 shares of common stock that Boxer Capital has the right to acquire pursuant to the Boxer 2011 Warrant. This number does not include the number of shares of common stock that can be acquired by Boxer Capital upon exercise of the Boxer 2012 Warrant, as such warrant is not currently exercisable and is subject to limitations of ownership as more fully described in Items 4 and 5.

\*\* = Based on 16,051,007 shares of common stock outstanding which is the sum of (i) 13,536,929 shares of common stock reported to be outstanding as of November 3, 2014 by the Issuer on its Form 10-Q filed with the Securities and Exchange Commission ( SEC ) on November 10, 2014, (ii) 2,250,000 shares of common stock that were issued in the 2015 Offering (defined below) as described in the prospectus of the Issuer, filed pursuant to Rule 424(b)(5) with the SEC on January 29, 2015, and (iii) 264,078 shares of common stock, which Boxer Capital currently has the right to acquire pursuant to the Boxer 2011 Warrant.

CUSIP No. 60468T105

SCHEDULE 13D/A

Page 3 of 12 Pages

1 NAME OF REPORTING PERSONS

Boxer Asset Management Inc.

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☒ (b) ☐

3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

..

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Bahamas

NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 0

8 SHARED VOTING POWER

OWNED BY

EACH

2,264,810\*

REPORTING 9 SOLE DISPOSITIVE POWER

PERSON

WITH 0

10 SHARED DISPOSITIVE POWER

2,264,810\*

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

2,264,810\*

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions)

..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

14.1%\*\*

14 TYPE OF REPORTING PERSON (See Instructions)

CO

\* This number includes 264,078 shares of common stock that Boxer Capital has the right to acquire pursuant to the Boxer 2011 Warrant. This number does not include the number of shares of common stock that can be acquired by Boxer Capital upon exercise of the Boxer 2012 Warrant, as such warrant is not currently exercisable and is subject to limitations of ownership as more fully described in Items 4 and 5.

\*\* Based on 16,051,007 shares of common stock outstanding which is the sum of (i) 13,536,929 shares of common stock reported to be outstanding as of November 3, 2014 by the Issuer on its Form 10-Q filed with the SEC on November 10, 2014, (ii) 2,250,000 shares of common stock that were issued in the Offering (defined below) as described in the prospectus of the Issuer, filed pursuant to Rule 424(b)(5) with the SEC on January 29, 2015, and (iii) 264,078 shares of common stock, which Boxer Capital currently has the right to acquire pursuant to the Boxer 2011 Warrant.

CUSIP No. 60468T105

SCHEDULE 13D/A

Page 4 of 12 Pages

1 NAME OF REPORTING PERSONS

Berkley Capital Management Ltd.  
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☒ (b) ☐  
3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

WC  
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

..  
6 CITIZENSHIP OR PLACE OF ORGANIZATION

Bahamas  
NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 0  
8 SHARED VOTING POWER

OWNED BY

EACH

500,000\*  
REPORTING 9 SOLE DISPOSITIVE POWER

PERSON

WITH

0  
10 SHARED DISPOSITIVE POWER

500,000\*

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

500,000\*

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions)

..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

3.1%\*\*

14 TYPE OF REPORTING PERSON (See Instructions)

CO

\* Based on 16,051,007 shares of common stock outstanding which is the sum of (i) 13,536,929 shares of common stock reported to be outstanding as of November 3, 2014 by the Issuer on its Form 10-Q filed with the SEC on November 10, 2014, (ii) 2,250,000 shares of common stock that were issued in the Offering (defined below) as described in the prospectus of the Issuer, filed pursuant to Rule 424(b)(5) with the SEC on January 29, 2015, and (iii) 264,078 shares of common stock, which Boxer Capital currently has the right to acquire pursuant to the Boxer 2011 Warrant.



CUSIP No. 60468T105

SCHEDULE 13D/A

Page 5 of 12 Pages

1 NAME OF REPORTING PERSONS

MVA Investors, LLC  
2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☒ (b) ☐  
3 SEC USE ONLY

4 SOURCE OF FUNDS (See Instructions)

WC  
5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

..  
6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware  
NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 429,340\*  
8 SHARED VOTING POWER

OWNED BY

EACH

0  
REPORTING 9 SOLE DISPOSITIVE POWER

PERSON

WITH

429,340\*  
10 SHARED DISPOSITIVE POWER

0

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

429,340\*

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions)

..

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

2.7%\*\*

14 TYPE OF REPORTING PERSON (See Instructions)

OO

\* This number does not include the number of shares of common stock that can be acquired by MVA Investors upon exercise of the MVA 2011 Warrant (defined below) and the MVA 2012 Warrant (defined below), as such warrants are not currently exercisable and are subject to limitations of ownership as more fully described in Items 4 and 5.

\*\* Based on 16,051,007 shares of common stock outstanding which is the sum of (i) 13,536,929 shares of common stock reported to be outstanding as of November 3, 2014 by the Issuer on its Form 10-Q filed with SEC on November 10, 2014, (ii) 2,250,000 shares of common stock that were issued in the Offering (defined below) as described in the prospectus of the Issuer, filed pursuant to Rule 424(b)(5) with the SEC on January 29, 2015, and (iii) 264,078 shares of common stock, which Boxer Capital currently has the right to acquire pursuant to the Boxer 2011 Warrant.

CUSIP No. 60468T105

SCHEDULE 13D/A

Page 6 of 12 Pages

## 1 NAME OF REPORTING PERSONS

Joseph Lewis

## 2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (See Instructions)

(a) ☒ (b) ☐

## 3 SEC USE ONLY

## 4 SOURCE OF FUNDS (See Instructions)

PF

## 5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) or 2(e)

..

## 6 CITIZENSHIP OR PLACE OF ORGANIZATION

United Kingdom

## NUMBER OF 7 SOLE VOTING POWER

SHARES

BENEFICIALLY 0

## 8 SHARED VOTING POWER

OWNED BY

EACH

REPORTING 2,764,810\*  
9 SOLE DISPOSITIVE POWER

PERSON

WITH 0

## 10 SHARED DISPOSITIVE POWER

- 2,764,810\*
- 11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
- 2,764,810\*
- 12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES (See Instructions)
- ..
- 13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
- 17.2%\*\*
- 14 TYPE OF REPORTING PERSON (See Instructions)

IN

\* This number includes 264,078 shares of common stock that Boxer Capital has the right to acquire pursuant to the Boxer 2011 Warrant. This number does not include the number of shares of common stock that can be acquired by Boxer Capital upon exercise of the Boxer 2012 Warrant, as such warrant is not currently exercisable and is subject to limitations of ownership as more fully described in Items 4 and 5.

\*\* Based on 16,051,007 shares of common stock outstanding which is the sum of (i) 13,536,929 shares of common stock reported to be outstanding as of November 3, 2014 by the Issuer on its Form 10-Q filed with the SEC on November 10, 2014, (ii) 2,250,000 shares of common stock that were issued in the Offering (defined below) as described in the prospectus of the Issuer, filed pursuant to Rule 424(b)(5) with the SEC on January 29, 2015, and (iii) 264,078 shares of common stock, which Boxer Capital currently has the right to acquire pursuant to the Boxer 2011 Warrant.

This Amendment No. 1 ( Amendment No. 1 ) is an original filing for Berkley Capital Management Ltd. ( Berkley Capital ) and amends and supplements the statement on Schedule 13D filed on November 4, 2013 (the Original Filing ) by Boxer Capital, LLC ( Boxer Capital ), Boxer Asset Management Inc. ( Boxer Management ), MVA Investors, LLC ( MVA Investors ) and Joseph Lewis (together with Boxer Capital, Boxer Management, MVA Investors and Berkley Capital, the Reporting Persons ). The Original Filing remains in effect except to the extent that it is amended, restated or superseded by information contained in this Amendment No. 1. Capitalized terms used and not defined in this Amendment No. 1 have the meanings set forth in the Original Filing, as amended.

## **Item 2. Identity and Background.**

This Amendment No. 1 is jointly filed by the Reporting Persons. Boxer Management, a corporation organized under the laws of the Bahamas, is the managing member and majority owner of Boxer Capital, a limited liability company organized under the laws of Delaware. Berkley Capital is a corporation organized under the laws of the Bahamas. Joseph Lewis is the sole indirect owner of and controls Boxer Management and Berkley Capital. Each of Boxer Capital, Boxer Management and Berkley Capital are primarily engaged in the business of investing in securities. Joseph Lewis is a citizen of the United Kingdom and his present principal occupation or employment is engaging in business as a private investor including through the investments of Boxer Capital. MVA Investors, a limited liability company organized under the laws of Delaware, is the independent, personal investment vehicle of certain employees of Boxer Capital and Tavistock Life Sciences Company, which is a Delaware corporation and an affiliate of Boxer Capital, and is controlled by employees of Tavistock Life Sciences Company that are members of MVA Investors. As such, MVA Investors is not controlled by Boxer Capital, Boxer Management, Berkley Capital or Joseph Lewis. MVA Investors is primarily engaged in the business of investing in securities. By virtue of these relationships and pursuant to the SEC's beneficial ownership rules, Boxer Capital, Boxer Management, Berkley Capital, MVA Investors and Joseph Lewis may be deemed to be members of a group, consisting of the Reporting Persons.

The address of each of Boxer Capital and MVA Investors for purposes of this filing is: 440 Stevens Ave, Suite 100, Solana Beach, CA, 92075. The address of each of Boxer Management, Berkley Capital and Joseph Lewis for purposes of this filing is: c/o Cay House P.O. Box N-7776 E.P. Taylor Drive Lyford Cay, New Providence, Bahamas.

Set forth on Schedule A to this Amendment No. 1, and incorporated herein by reference, is the (a) name, (b) residence or business address, (c) present principal occupation or employment, and (d) citizenship, of each executive officer and director of each of the Reporting Persons, and (e) name of any corporation or other organization in which such occupation or employment is conducted, together with the principal business and address of any such corporation or organization other than Boxer Capital, Boxer Management, Berkley Capital and MVA Investors.

The Reporting Persons have not, during the past five years, (i) been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors), or (ii) been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting, or mandating activities subject to, federal or state securities laws or a finding of any violation with respect to such laws.

## **Item 3. Source and Amount of Funds or Other Consideration.**

The aggregate purchase price of the Common Stock purchased and currently owned by the Reporting Persons is \$30,530,652. The source of the funding for the purchases of the Common Stock was the general working capital of Boxer Capital, Berkley Capital and MVA Investors.

**Item 4. Purpose of Transaction.**

*2015 Offering*

On January 29, 2015, Boxer Capital and Berkley Capital agreed to purchase 50,000 shares of Common Stock and 500,000 shares of Common Stock, respectively, in the Issuer's secondary registered offering at \$20.00 per share (the 2015 Offering ). The 2015 Offering is expected to close on February 3, 2015. The Reporting Persons acquired their equity positions in the 2015 Offering for investment purposes.

**Item 5. Interest in Securities of the Issuer.**

All percentages are based on 16,051,007 shares of common stock outstanding which is the sum of (i) 13,536,929 shares of common stock reported to be outstanding as of November 3, 2014 by the Issuer on its Form 10-Q filed with the SEC on November 10, 2014, (ii) 2,250,000 shares of common stock that were issued in the 2015 Offering as described in the prospectus of the Issuer, filed pursuant to Rule 424(b)(5) with the SEC on January 29, 2015, and (iii) 264,078 shares of common stock, which are beneficially owned by Boxer Capital and are subject to the Boxer 2011 Warrant. The shares of Common Stock that Boxer Capital has the right to acquire upon exercise of the Boxer 2012 Warrant are not deemed to be currently beneficially owned by any of the Reporting Persons. The shares of Common Stock that MVA Investors has the right to acquire upon exercise of the MVA 2011 Warrant and the MVA 2012 Warrant are not deemed to be currently beneficially owned by any of the Reporting Persons.

(a) The Reporting Persons may be deemed to beneficially own, in the aggregate, 3,194,150 shares of Common Stock, representing 19.9% of the Issuer's outstanding Common Stock.

Boxer Capital and Boxer Management beneficially own 2,264,810 shares of Common Stock which represents 14.1% of the Issuer's outstanding Common Stock. Berkley Capital beneficially owns 500,000 shares of Common Stock which represents 3.1% of the Issuer's outstanding Common Stock. Joseph Lewis beneficially owns 2,764,810 shares of Common Stock which represents 17.2% of the Issuer's outstanding Common Stock. MVA Investors beneficially owns 429,340 shares of Common Stock which represents 2.7% of the Issuer's outstanding Common Stock.

The 2011 Warrants represent a right for Boxer Capital and MVA Investors to purchase 272,882 and 40,875 shares of Common Stock, respectively, at an exercise price of \$6.74 (subject to adjustment). The 2011 Warrants are only exercisable to the extent that the holders thereof and their affiliates and joint actors would beneficially own no more than 19.9% of the outstanding Common Stock after exercise.

(b) With respect to any rights or powers to vote, or to direct the vote of, or to dispose of, or direct the disposition of, the Common Stock owned by the Reporting Persons:

(i) Sole power to vote or direct the vote:

MVA Investors has the sole power to vote the 429,340 shares of Common Stock it beneficially owns. Boxer Capital, Boxer Management, Berkley Capital and Joseph Lewis do not have the sole power to vote or direct the vote of any shares of Common Stock.

(ii) Shared power to vote or to direct the vote:

Boxer Capital and Boxer Management have shared voting power with respect to the 2,264,810 shares of Common Stock they beneficially own. Berkley Capital has shared voting power with respect to the 500,000 shares of Common Stock it beneficially owns. Joseph Lewis has shared voting power with respect to the 2,764,810 shares of Common Stock he beneficially owns. MVA Investors does not have shared power to vote or direct the vote of any shares of Common Stock.

(iii) Sole power to dispose or direct the disposition of:

MVA Investors has the sole power to dispose of the 429,340 shares of Common Stock it beneficially owns. Boxer Capital, Boxer Management, Berkley Capital and Joseph Lewis do not have the sole power to dispose or direct the

disposition of any shares of Common Stock.



(iv) Shared power to dispose or to direct the disposition of:

Boxer Capital and Boxer Management have shared dispositive power with respect to the 2,264,810 shares of Common Stock they beneficially own. Berkley Capital has shared dispositive power with respect to the 500,000 shares of Common Stock it beneficially owns. Joseph Lewis has shared voting power with respect to the 2,764,810 shares of Common Stock he beneficially owns. MVA Investors does not have shared power to dispose of or direct the disposition of any shares of Common Stock.

(c) Other than the 2015 Offering as described herein, the Reporting Persons have not engaged in any transaction in the Common Stock in the past 60 days.

(d) No other person has the right to receive or the power to direct the receipt of dividends, or proceeds of sale of such securities outlined in this Report.

(e) Not applicable.

#### **Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.**

Except as otherwise described in the Original Filing and herein, there are no contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the Issuer, including, but not limited to, transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

#### **Item 7. Material to Be Filed as Exhibits.**

|           |  |
|-----------|--|
| Exhibit 1 | Joint Filing Agreement, dated February 2, 2015, among Boxer Capital, Boxer Management, Berkley Capital, MVA Investors and Joseph Lewis   |
| Exhibit 2 | Form of Securities Purchase Agreement relating to the 2012 Private Placement, which is incorporated herein by reference to Exhibit 10.2 to the Form 10 filed by the Issuer on May 10, 2013     |
| Exhibit 3 | Form of Warrant Certificate issued in connection with the 2011 Private Placement, which is incorporated herein by reference to Exhibit 10.3 to the Form 10 filed by the Issuer on May 10, 2013 |
| Exhibit 4 | Form of Warrant Certificate issued in connection with the 2012 Private Placement, which is incorporated herein by reference to Exhibit 10.4 to the Form 10 filed by the Issuer on May 10, 2013 |

**SIGNATURE**

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date: February 2, 2015

BOXER CAPITAL, LLC

By: /s/ Aaron Davis  
Name: Aaron Davis  
Title: Authorized Signatory

BOXER ASSET MANAGEMENT INC.

By: /s/ Jefferson R. Voss  
Name: Jefferson R. Voss  
Title: Director

BERKLEY CAPITAL MANAGEMENT LTD.

By: /s/ Jefferson R. Voss  
Name: Jefferson R. Voss  
Title: Authorized Signatory

MVA INVESTORS, LLC

By: /s/ Christopher Fuglesang  
Name: Christopher Fuglesang  
Title: Authorized Signatory

JOSEPH LEWIS

By: /s/ Joseph Lewis  
Joseph Lewis, Individually

**SCHEDULE A****ADDITIONAL INFORMATION CONCERNING THE REPORTING PERSONS****BOXER CAPITAL, LLC**

The executive officers and directors of Boxer Capital, LLC are set forth below. The individuals' business addresses are 440 Stevens Avenue, Suite 100, Solana Beach, CA 92075. Except as otherwise stated, the present principal occupation or employment set forth below opposite the name refers to employment with Boxer Capital, LLC.

| <b>Name</b>           | <b>Present Principal Occupation or Employment</b> | <b>Citizenship</b> |
|-----------------------|---|--------------------|
| Shehan Dissanayake    | Chief Executive Officer                           | United States      |
| Aaron Davis           | Member  | United States      |
| Christopher Fuglesang | Member  | United States      |
| Boxer Management      | Manager   | Bahamas            |

**BOXER ASSET MANAGEMENT INC.**

The executive officers and directors of Boxer Asset Management Inc. are set forth below. Each individual's business address is c/o Cay House P.O. Box N-7776 E.P. Taylor Drive Lyford Cay, New Providence, Bahamas. Except as otherwise stated, the present principal occupation or employment set forth below opposite the name of each person refers to employment with Boxer Asset Management Inc.

| <b>Name</b>       | <b>Present Principal Occupation or Employment</b> | <b>Citizenship</b> |
|-------------------|---|--------------------|
| Joseph Lewis      | Director, President                               | United Kingdom     |
| Jefferson R. Voss | Director, Vice President                          | United States      |

**BERKLEY CAPITAL MANAGEMENT LTD.**

The executive officers and directors of Berkley Capital Management Ltd. are set forth below. Each individual's business address is c/o Cay House P.O. Box N-7776 E.P. Taylor Drive Lyford Cay, New Providence, Bahamas. Except as otherwise stated, the present principal occupation or employment set forth below opposite the name of each person refers to employment with Berkley Capital Management Ltd.

| <b>Name</b>     | <b>Present Principal Occupation or Employment</b> | <b>Citizenship</b> |
|-----------------|---|--------------------|
| Joseph Lewis    | Director, President                               | United Kingdom     |
| Jason Callender | Director, Vice President and Secretary            | Bahamas            |

**MVA INVESTORS, LLC**

The executive officers and directors of MVA Investors, LLC are set forth below. Each individual's business address is 440 Stevens Ave, Suite 100, Solana Beach, CA, 92075. Except as otherwise stated, the present principal occupation or employment set forth below opposite the name refers to employment with MVA Investors, LLC.

| <b>Name</b>           | <b>Present Principal Occupation</b>  | <b>Citizenship</b> |
|-----------------------|--|--------------------|
| Aaron Davis           | Member, Employee of Tavistock Life Sciences Company                          | United States      |
| Christopher Fuglesang | Member, President, Employee of Tavistock Life Sciences Company               | United States      |
| Neil Reisman          | Member, Chief Executive Officer, Employee of Tavistock Life Sciences Company | United States      |
| Ivan Lieberburg       | Member, Employee of Tavistock Life Sciences Company                          | United States      |
| Shehan Dissanayake    | Member, Manager, Employee of Tavistock Life Sciences Company                 | United States      |

**EXHIBIT INDEX**

| <b>Exhibit No.</b> | <b>Description</b>   |
|--------------------|--|
| 1                  | Joint Filing Agreement, dated February 2, 2015, among Boxer Capital, Berkley Capital, MVA Investors, Boxer Management and Joseph Lewis   |
| 2                  | Form of Securities Purchase Agreement relating to the 2012 Private Placement, which is incorporated herein by reference to Exhibit 10.2 to the Form 10 filed by the Issuer on May 10, 2013     |
| 3                  | Form of Warrant Certificate issued in connection with the 2011 Private Placement, which is incorporated herein by reference to Exhibit 10.3 to the Form 10 filed by the Issuer on May 10, 2013 |
| 4                  | Form of Warrant Certificate issued in connection with the 2012 Private Placement, which is incorporated herein by reference to Exhibit 10.4 to the Form 10 filed by the Issuer on May 10, 2013 |

rated by reference is considered to be part of this prospectus supplement and the accompanying prospectus. Information that the Company files with the SEC after the date of this prospectus supplement will automatically modify and supersede the information included or incorporated by reference into this prospectus supplement and the accompanying prospectus to the extent that the subsequently filed information modifies or supersedes the existing information.

The following documents are incorporated by reference (other than any portions of any such documents that are not deemed filed under the Securities Exchange Act of 1934, as amended, in accordance with the Securities Exchange Act of 1934, as amended, and applicable SEC rules):

The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2015 filed with the SEC on February 16, 2016;

The Company's Definitive Proxy Statement for the 2016 Annual Meeting of Stockholders, filed with the SEC on March 28, 2016;

The Company's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2016 filed with the SEC on May 4, 2016;

The Company's Current Reports on Form 8-K and 8-K/A filed on February 3, 2016, February 19, 2016, May 10, 2016 and May 11, 2016;

**Table of Contents**

Any future filings the Company makes with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until all of the securities offered by this prospectus supplement and the accompanying prospectus are sold or the offering is otherwise terminated; and

The description of the Company's common stock in its Registration Statement on Form 8-A, dated April 8, 1993, and any other amendment or report filed for the purpose of updating such description.

You may request a copy of any of these filings at no cost by writing to or telephoning the Company at the following address and telephone number:

Healthcare Realty Trust Incorporated

3310 West End Avenue, Suite 700

Nashville, Tennessee 37203

Corporate Communications

(615) 269-8175

Communications@healthcarerealty.com

S-17

**Table of Contents**

**PROSPECTUS**

**Common Stock**

**Common Stock Warrants**

**Preferred Stock**

**Debt Securities**

Healthcare Realty Trust Incorporated may offer from time to time, in one or more classes or series, the following:

Shares of common stock;

Warrants to purchase shares of common stock;

Shares of preferred stock;

Debt securities, which may be either senior debt securities or subordinated debt securities, in each case consisting of notes or other evidence of indebtedness; or

Any combination of these securities, individually or as units.

We will offer such securities on terms determined at the time such securities are offered. We may offer our common stock and warrants, preferred stock and debt securities separately or together, in separate classes or series, in amounts, at prices and on terms set forth in an applicable prospectus supplement to this prospectus. In addition, selling stockholders to be named in a prospectus supplement may offer and sell shares of our common stock from time to time in such amounts as set forth in a prospectus supplement. The applicable prospectus supplement will also contain information, where applicable, about certain federal income tax considerations relating to, and any listing on a securities exchange of, the securities covered by such prospectus supplement.

The securities may be offered and sold directly to investors through agents designated from time to time by them or us, or to or through underwriters or dealers, or through a combination of these methods. We reserve the sole right to accept, and together with our agents, dealers and underwriters reserve the right to reject, in whole or in part, any proposed purchase of securities to be made directly by investors or through agents, dealers or underwriters. If any agents, dealers or underwriters are involved in the sale of any of the securities, their names, and any applicable

purchase price, fee, commission or discount arrangement between or among them, will be set forth, or will be calculable from the information set forth, in the applicable prospectus supplement. See **PLAN OF DISTRIBUTION**. Our net proceeds from the sale of securities also will be set forth in the applicable prospectus supplement. No securities may be sold without delivery of the applicable prospectus supplement describing the method and terms of the offering of such series of securities.

Our common stock is listed on the New York Stock Exchange under the symbol **HR**. On February 14, 2014, the last reported sale price of our common stock was \$22.38 per share.

*Investing in our securities involves risks. You should carefully review the discussion under the heading **RISK FACTORS** on page 5 regarding information included and incorporated by reference in this prospectus and the applicable prospectus supplement.*

*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 February 19, 2014**



**Table of Contents**

**TABLE OF CONTENTS**

|  |    |
|--|----|
| <u>ABOUT THIS PROSPECTUS</u>   | 3  |
| <u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>                         | 3  |
| <u>RISK FACTORS</u>  | 5  |
| <u>THE COMPANY</u>   | 5  |
| <u>SELLING STOCKHOLDERS</u>  | 5  |
| <u>USE OF PROCEEDS</u>   | 6  |
| <u>RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS</u> | 6  |
| <u>GENERAL DESCRIPTION OF SECURITIES THE COMPANY MAY SELL</u>                    | 6  |
| <u>DESCRIPTION OF COMMON STOCK</u>   | 7  |
| <u>DESCRIPTION OF COMMON STOCK WARRANTS</u>                                      | 9  |
| <u>DESCRIPTION OF PREFERRED STOCK</u>  | 10 |
| <u>DESCRIPTION OF DEBT SECURITIES</u>  | 14 |
| <u>U.S. FEDERAL INCOME TAX CONSIDERATIONS</u>                                    | 20 |
| <u>PLAN OF DISTRIBUTION</u>  | 30 |
| <u>LEGAL MATTERS</u>   | 31 |
| <u>EXPERTS</u>   | 31 |
| <u>WHERE YOU CAN FIND MORE INFORMATION</u>                                       | 31 |
| <u>INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE</u>                           | 32 |

---

**Table of Contents**

**ABOUT THIS PROSPECTUS**

This prospectus is part of an automatic shelf registration statement that Healthcare Realty filed with the Securities and Exchange Commission, or SEC, as a well-known seasoned issuer as defined in Rule 405 under the Securities Act of 1933, as amended. Under the automatic shelf registration process, we may, over time, sell any combination of the securities described in this prospectus in one or more offerings. This prospectus provides you with a general description of the securities that we may offer. As allowed by SEC rules, this prospectus does not contain all the information you can find in the registration statement or the exhibits to the registration statement. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. The prospectus supplement and/or a free writing prospectus may also add to or update other information contained in this prospectus. See **PLAN OF DISTRIBUTION** on page 30 of this prospectus. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both the prospectus and any prospectus supplement together with the additional information described under the heading **WHERE YOU CAN FIND MORE INFORMATION** and **INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE** on page 32 of this prospectus.

**You should rely only on the information contained or incorporated by reference in this prospectus and the applicable prospectus supplement. We have not authorized any person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information appearing in this prospectus or any other documents incorporated by reference is accurate only as of the date on the front cover of the applicable document. We are not making an offer to sell, or a solicitation of an offer to purchase, these securities in any jurisdiction where the offer or sale is not permitted.**

Unless the context otherwise requires, as used in this prospectus, the terms HR, Healthcare Realty, the Company, we, us, and our include Healthcare Realty Trust Incorporated, its subsidiaries and other entities in which Healthcare Realty Trust Incorporated or its subsidiaries own an interest.

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

Certain information included or incorporated by reference in this prospectus may be deemed to be forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Securities Exchange Act). Forward-looking statements include all statements that do not relate solely to historical or current facts, and can be identified by the use of words such as may, will, expect, believe, anticipate, intend, target, plan, estimate, project, and other comparable terms. These forward-looking statements are based on the current plans and expectations of management and are subject to a number of risks and uncertainties, including those set forth below, which could significantly affect the Company's current plans and expectations and future financial condition and results.

While it is not possible to identify all of these factors, the Company continues to face many risks and uncertainties that could cause actual results to differ from those forward-looking statements, including:

Our expected results may not be achieved;

Our expiring long-term single-tenant net leases may not be extended;

Our revenues depend on the ability of our tenants and sponsoring health systems under our leases and property operating agreements to generate sufficient income from their operations to make loan, rent and shortfall payments to us;

We have incurred significant debt obligations and may incur additional debt and increase leverage in the future;

The unavailability of equity and debt capital, volatility in the credit markets, increases in interest rates, or changes in our debt ratings could have an adverse effect on our ability to meet debt payments, make dividend payments to stockholders or engage in acquisition and development activity;

**Table of Contents**

We may decide or may be required under purchase options to sell certain properties. We may not be able to reinvest the proceeds from sale at rates of return equal to the return received on the properties sold;

Covenants in our debt instruments limit our operational flexibility, and a breach of these covenants could materially affect our financial condition and results of operations;

A change to our current dividend payment may have an adverse effect on the market price of our stock;

If lenders under the Company's unsecured credit facility fail to meet their funding commitments, our financial position would be negatively impacted;

Owning real estate and indirect interests in real estate is subject to inherent risks;

We may incur impairment charges on our real estate properties or other assets;

If a healthcare tenant loses its licensure or certification, becomes unable to provide healthcare services, cannot meet its financial obligations to us or otherwise vacates a facility, we would have to obtain another tenant for the affected facility;

If we are unable to promptly re-let our properties, if the rates upon such re-letting are significantly lower than the previous rates or if we are required to undertake significant expenditures to attract new tenants, then our business, financial condition and results of operations would be adversely affected;

Certain of our properties are special purpose healthcare facilities and may not be easily adaptable to other uses;

We have, and may have more in the future, exposure to fixed rent escalators, which could impact our growth and profitability;

Our real estate investments are illiquid and we may not be able to sell properties strategically targeted for disposition;

We are subject to risks associated with the development of properties;

From time to time, we may make material acquisitions and developments that may involve the expenditure of significant funds and may not perform in accordance with management's expectations;

We are exposed to risks associated with entering new geographic markets;

Many of our properties are held under ground leases. These ground leases contain provisions that may limit our ability to lease, sell, or finance these properties;

We are exposed to increases in interest rates, which could adversely impact our ability to refinance existing debt, sell assets or engage in acquisition and development activity;

Adverse trends in the healthcare service industry may negatively affect our lease revenues and the value of our investments;

If we fail to remain qualified as a real estate investment trust, or REIT, we will be subject to significant adverse consequences, including adversely affecting the value of our common stock;

Dividends payable by REITs do not qualify for the reduced tax rates available for some dividends;

Complying with the REIT requirements may cause us to forego otherwise attractive opportunities;

Qualifying as a REIT involves highly technical and complex provisions of the Internal Revenue Code of 1986, as amended (the Code);

New legislation or administrative or judicial action, in each instance potentially with retroactive effect, could make it more difficult or impossible for us to qualify as a REIT;

## **Table of Contents**

Our Articles of Incorporation contain limits and restrictions on transferability of our common stock which may have adverse effects on the value of our stock;

We may experience uninsured or underinsured losses related to casualty or liability; and

We are subject to cyber security risks.

We caution you that the factors listed above, as well as the risk factors included or incorporated by reference in this prospectus or any prospectus supplement, may not be exhaustive. The Company operates in a continually changing business environment, and new risk factors emerge from time to time. We cannot predict such new risk factors, nor can we assess the impact, if any, of such new risk factors on our businesses or the extent to which any factor or combination of factors may cause actual results to differ materially from those expressed or implied by any forward-looking statements.

All forward-looking statements attributable to the Company or persons acting on our behalf apply only as of the date of this prospectus and are expressly qualified in their entirety by the cautionary statements included in this prospectus. Healthcare Realty undertakes no obligation to publicly update or revise forward-looking statements, which may be made to reflect events or circumstances after the date made or to reflect the occurrence of unanticipated events, except as required by applicable securities laws. Stockholders and investors are cautioned not to unduly rely on such forward-looking statements when evaluating the information presented in this prospectus.

## **RISK FACTORS**

An investment in our securities involves a high degree of risk. In addition to the other information included and incorporated by reference in this prospectus, you should carefully review the risk factors and other information included and incorporated by reference in the applicable prospectus supplement when determining whether or not to purchase the securities offered under this prospectus and the applicable prospectus supplement.

## **THE COMPANY**

Healthcare Realty was incorporated in Maryland in 1992 and is a self-managed and self-administered REIT that owns, acquires, manages, finances, and develops income-producing real estate properties associated primarily with the delivery of outpatient healthcare services throughout the United States.

We were formed as an independent, unaffiliated healthcare REIT. We believe that we have a strategic advantage in providing our services to a more diverse group of healthcare providers because we are not affiliated with any of our clients and do not expect to become affiliated with potential clients. We also believe that our strategic focus on the outpatient service and medical office segments of the healthcare industry allows us to take advantage of the continued shift in healthcare services toward outpatient settings.

We operate so as to qualify as a REIT for federal income tax purposes. As a REIT, we are not subject to corporate federal income tax with respect to that portion of our ordinary income or capital gain that is currently distributed to our stockholders, provided that we distribute at least 90% of our taxable income to stockholders.

Our principal executive offices are located at 3310 West End Avenue, Suite 700, Nashville, Tennessee 37203, and our telephone number is (615) 269-8175.

## **SELLING STOCKHOLDERS**

We may register shares of common stock covered by this prospectus for re-offers and resales by any selling stockholders named in a prospectus supplement. Because we are a well-known seasoned issuer, as defined in Rule 405 under the Securities Act, we may add secondary sales of shares of our common stock by any selling stockholders by filing a prospectus supplement with the SEC. We may register these shares to permit selling stockholders to resell their shares when they deem appropriate. Selling stockholders may resell all, a portion or

**Table of Contents**

none of their shares at any time and from time to time. Selling stockholders may also sell, transfer or otherwise dispose of some or all of their shares of our common stock in transactions exempt from the registration requirements of the Securities Act. We do not know when or in what amounts the selling stockholders may offer shares for sale under this prospectus and any prospectus supplement. We may pay all expenses incurred with respect to the registration of the shares of common stock owned by the selling stockholders, other than underwriting fees, discounts or commissions, which will be borne by the selling stockholders. We will provide you with a prospectus supplement naming the selling stockholder(s), the amount of shares to be registered and sold and any other terms of the shares of common stock being sold by the selling stockholder(s).

**USE OF PROCEEDS**

Unless otherwise specified in the prospectus supplement accompanying this prospectus, we intend to use the net proceeds from the sale of the securities for general corporate purposes, which may include the repayment of indebtedness and investment in healthcare related properties.

**RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table sets forth our consolidated ratio of earnings to combined fixed charges and preferred stock dividends for the periods indicated:

|   | 2009  | For the Year Ended December 31, |          |          |          |
|---|-------|---------------------------------|----------|----------|----------|
|   |       | 2010                            | 2011     | 2012     | 2013     |
| Ratio of earnings to combined fixed charges and preferred stock dividends (1) | 1.05x | 0.78x(2)                        | 0.77x(3) | 0.94x(4) | 0.83x(5) |

- (1) The years ended December 31, 2012, 2011, 2010 and 2009 have been restated to conform to the December 31, 2013 presentation. For the purpose of calculating the ratio of earnings to fixed charges, net income from continuing operations has been added to fixed charges, net of capitalized interest, and that sum has been divided by such fixed charges. Fixed charges consist of interest expense, which includes amortization of debt issue cost, plus one-third (the proportion deemed to be representative of the interest factor) of rent expense and capitalized interest. This fixed charge ratio, calculated in accordance with Item 503 of Regulation S-K, includes only income from continuing operations, which is reduced by depreciation and amortization and the operating results of properties currently classified as held for sale, as well as other income from discontinued operations.
- (2) For the year ended December 31, 2010, earnings from continuing operations were insufficient to cover fixed charges by approximately \$17.3 million.
- (3) For the year ended December 31, 2011, earnings from continuing operations were insufficient to cover fixed charges by approximately \$20.1 million.
- (4) For the year ended December 31, 2012, earnings from continuing operations were insufficient to cover fixed charges by approximately \$4.9 million.
- (5) For the year ended December 31, 2013, earnings from continuing operations were insufficient to cover fixed charges by approximately \$12.5 million.

**GENERAL DESCRIPTION OF SECURITIES THE COMPANY MAY SELL**

We, directly or through agents, dealers or underwriters that we may designate, may offer and sell, from time to time, an unspecified amount of:



Shares of our common stock;

Warrants to purchase shares of our common stock;

Shares of our preferred stock; or

Our debt securities, which may be either senior debt securities or subordinated debt securities.

## **Table of Contents**

We may offer and sell these securities either individually or as units consisting of one or more of these securities, each on terms to be determined at the time of the offering. We may issue debt securities and/or preferred stock that are exchangeable for and/or convertible into common stock or any of the other securities that may be sold under this prospectus. When particular securities are offered, a supplement to this prospectus will be delivered with this prospectus, which will describe the terms of the offering and sale of the offered securities.

## **DESCRIPTION OF COMMON STOCK**

We are authorized to issue an aggregate of 200,000,000 shares of capital stock, which may include 150,000,000 shares of common stock and 50,000,000 shares of preferred stock. The following description of the common stock sets forth the general terms and provisions of the common stock to which any prospectus supplement may relate, including a prospectus supplement providing that common stock will be issuable upon conversion of debt securities or preferred stock or upon the exercise of common stock warrants. The statements below describing the common stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of the Company's charter and bylaws.

Holders of common stock are entitled to receive such dividends as the board of directors may declare out of funds legally available for the payment of dividends. Upon issuance, the shares of common stock will be fully paid and nonassessable and have no preferences or conversion, exchange or preemptive rights. In the event of any liquidation, dissolution or winding-up, the holders of common stock are entitled to share ratably in any of our assets remaining after the satisfaction of all obligations and liabilities and after required distributions to holders of preferred stock, if any. The common stock is subject to restrictions on transfer under certain circumstances described under "Restrictions on Transfer" below. Each share is entitled to one vote on all matters voted upon by the stockholders. Holders of shares of common stock have no cumulative voting rights.

## **Transfer Agent and Exchange Listing**

Wells Fargo Bank, National Association is the transfer agent and registrar for the common stock. The common stock is listed on the New York Stock Exchange under the symbol HR.

## **Restrictions on Transfer**

For us to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"):

1. Not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly (after application of certain attribution rules), by five or fewer individuals at any time during the last half of our taxable year; and
2. 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 order to ensure that requirement (1) above is satisfied, the board of directors has the power to refuse to transfer shares of our capital stock to any person whose acquisition of such shares would result in the direct or indirect ownership of more than 9.9% in value of the outstanding capital stock.

In connection with the foregoing, if the board of directors, at any time and in good faith, believes that direct or indirect ownership (as determined under applicable federal tax attribution rules) in excess of this ownership limit has or may become concentrated in the hands of one beneficial owner, the board of directors has the power to refuse to transfer or issue these excess shares to a person whose acquisition of such excess shares would cause a beneficial holder to exceed the ownership limit. Further, any transfer of excess shares that would cause a beneficial owner to hold shares of capital stock in excess of the ownership limit shall be deemed void, and the intended transferee shall be deemed never to have had an interest therein.

## **Table of Contents**

If at any time there is a transfer in violation of these restrictions, the excess shares shall be deemed to have been transferred to the Company, as trustee for the benefit of such persons to whom the excess shares are later transferred. Subject to our right to purchase the excess shares, the interest in the trust representing the excess shares shall be freely transferable by the intended transferee at a price that does not exceed the price paid by the intended transferee of the excess shares. Excess shares do not have voting rights, and will not be considered for the purpose of any shareholder vote or determining a quorum, but will continue to be reflected as issued and outstanding stock. We will not pay dividends with respect to excess shares. We may purchase excess shares for the lesser of the amount paid for the excess shares by the intended transferee or the market price. The market price for any stock so purchased shall be equal to the fair market value of such shares reflected in:

The closing sales price for the stock, if then listed on a national securities exchange;

The average closing sales price of such stock, if then listed on more than one national securities exchange; or

If the stock is not then listed on a national securities exchange, the latest bid quotation for the stock if then traded over-the-counter, as of the day immediately preceding the date on which notices of such purchase are sent by us.

If no such closing sales prices or quotations are available, the purchase price shall equal the net asset value of such stock as determined by the board of directors in accordance with applicable law.

All certificates representing shares of common stock bear a legend referring to the restrictions described above. These restrictions may have the effect of preventing an acquisition of control of us by a third party.

## **Business Combinations**

Under Maryland law, some business combinations (including a merger, consolidation, share exchange, or, in certain circumstances, an asset transfer or issuance of equity securities) between a Maryland corporation and any person who beneficially owns 10% or more of the voting power of the corporation's outstanding voting stock (an interested shareholder) must be: (1) recommended by the corporation's board of directors; and (2) approved by the affirmative vote of at least (a) 80% of the corporation's outstanding shares entitled to vote and (b) two-thirds of the outstanding shares entitled to vote which are not held by the interested shareholder with whom the business combination is to be effected, unless, among other things, the corporation's common shareholders receive a minimum price (as defined in the statute) for their shares and the consideration is received in cash or in the same form as previously paid by the interested shareholder for his or her shares. In addition, an interested shareholder or any affiliate thereof may not engage in a business combination with the corporation for a period of five years following the date he or she becomes an interested shareholder. These provisions of Maryland law do not apply, however, to business combinations that are approved by the board of directors of a Maryland corporation prior to such person becoming an interested shareholder.

## **Control Share Acquisitions**

Maryland law also provides that control shares of a Maryland corporation acquired in a control share acquisition may not be voted except to the extent approved by a vote of two-thirds of all the votes entitled to be cast on the matter by shareholders excluding voting shares owned by the acquirer, and officers and directors who are also employees of the corporation. Control shares are voting shares which, if aggregated with all other shares owned by a person or in

respect of which that person is entitled to exercise or direct the exercise of voting power, would entitle the acquirer to vote: (1) 10% or more but less than one-third; (2) one-third or more but less than a majority; or (3) a majority or more of the outstanding voting shares. Control shares do not include shares the acquiring person is entitled to vote because shareholder approval has previously been obtained. A control share acquisition means the acquisition of control shares, subject to certain exceptions.

## **Table of Contents**

A person who has made or proposes to make a control share acquisition and who has obtained a definitive financing agreement with a responsible financial institution providing for any amount of financing not to be provided by the acquiring person may compel the corporation's board of directors to call a special meeting of shareholders to be held within 50 days of demand to consider the voting rights of the shares. If no request for a meeting is made, the corporation may itself present the question at any shareholders' meeting.

Subject to certain conditions and limitations, the corporation may redeem any or all of the control shares, except those for which voting rights have previously been approved, for fair value determined, without regard to voting rights, as of the date of the last control share acquisition or as of the date of any meeting of shareholders at which the voting rights of such shares are considered and not approved. If the shareholders approve voting rights for control shares and the acquirer is entitled to vote a majority of the shares entitled to vote, all other shareholders may exercise appraisal rights. The fair value of the shares as determined for purposes of such appraisal rights may not be less than the highest price per share in the control share acquisition, and certain limitations and restrictions otherwise applicable to the exercise of dissenter's rights do not apply in the context of a control share acquisition.

The control share acquisition statute does not apply to shares acquired in a merger, consolidation or share exchange if the corporation is a party to the transaction, or to acquisitions approved or exempted by the articles of incorporation or bylaws of the corporation prior to a control share acquisition.

Certain provisions of our charter and bylaws, including the limitation on ownership of common stock, a classified board of directors and supermajority voting requirements for the removal of directors or the amendment of the charter and bylaws, as well as the provisions of Maryland law described above, could have the effect of discouraging offers to acquire us and of increasing the difficulty of consummating any such offer.

## **Dividend Reinvestment Plan and Employee Stock Purchase Plan**

We have adopted and implemented a dividend reinvestment plan to provide registered owners of our common stock with a method of investing dividends and other distributions paid in cash in additional shares of the common stock. We have also adopted an employee stock purchase plan to allow employees to purchase common stock on terms and conditions set forth in such plan. Since such additional common stock will be purchased from us, we will receive additional funds which will be used for general corporate purposes.

## **DESCRIPTION OF COMMON STOCK WARRANTS**

We may issue warrants for the purchase of common stock. Common stock warrants may be issued independently or together with any other securities pursuant to any prospectus supplement and may be attached to or separate from such securities. Each series of common stock warrants will be issued under a separate warrant agreement to be entered into between us and the warrant recipient or, if the recipients are numerous, a warrant agent identified in the applicable prospectus supplement. The warrant agent, if engaged, will act solely as our agent in connection with the common stock warrants of such series and will not assume any obligation or relationship of agency or trust for or with any holders or beneficial owners of common stock warrants. Further terms of the common stock warrants and the applicable warrant agreements will be set forth in the applicable prospectus supplement.

The applicable prospectus supplement will describe the terms of any common stock warrants in respect of which this prospectus is being delivered, including, where applicable, the following:

The title of such common stock warrants;

The aggregate number of such common stock warrants;

The price or prices at which such common stock warrants will be issued;

The designation, number and terms of the shares of common stock purchasable upon exercise of such common stock warrants;

## **Table of Contents**

The designation and terms of the other securities with which such common stock warrants are issued and the number of such common stock warrants issued with each such offered security;

The date, if any, on and after which such common stock warrants and the related common stock will be separately transferable;

The price at which each share of common stock purchasable upon exercise of such common stock warrants may be purchased;

The date on which the right to exercise such common stock warrants shall commence and the date on which such right shall expire;

The minimum or maximum amount of such common stock warrants that may be exercised at any one time;

Information with respect to book-entry procedures, if any;

A discussion of certain federal income tax considerations; and

Any other terms of such common stock warrants, including terms, procedures and limitations relating to the exchange and exercise of such common stock warrants.

You should review the section captioned **DESCRIPTION OF COMMON STOCK** for a general description of the common stock which would be acquired upon the exercise of the common stock warrants.

## **DESCRIPTION OF PREFERRED STOCK**

### **General**

We are authorized to issue 50,000,000 shares of preferred stock. The following description of the preferred stock sets forth certain anticipated general terms and provisions of the preferred stock to which any prospectus supplement may relate. Certain other terms of any series of preferred stock (which terms may be different than those stated below) will be described in the prospectus supplement to which such series relates. The statements below describing the preferred stock are in all respects subject to and qualified in their entirety by reference to the applicable provisions of the prospectus supplement, our charter, (including the amendment describing the designations, rights, and preferences of each series of preferred stock) and bylaws.

Subject to limitations prescribed by Maryland law and the charter, our board of directors is authorized to fix the number of shares constituting each series of preferred stock and the designations and powers, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof, including such provisions as may be desired concerning voting, redemption, dividends, dissolution or the distribution of assets, conversion or exchange, and such other subjects or matters as may be fixed by resolution of the board of directors or the duly authorized committee thereof. The preferred stock will, when issued, be fully paid and nonassessable and will



have no preemptive rights.

The prospectus supplement relating to preferred stock will contain the specific terms, including:

The title and stated value of such preferred stock;

The number of shares of such preferred stock offered, the liquidation preference per share and the offering price of such preferred stock;

The dividend rate(s), period(s) and or payment date(s) or method(s) of calculation thereof applicable to such preferred stock;

The date from which dividends on such preferred stock shall accumulate, if applicable;

The provision for a sinking fund, if any, for such preferred stock;

The provisions for redemption, if applicable, of such preferred stock;

**Table of Contents**

Any listing of such preferred stock on any securities exchange;

The terms and conditions, if applicable, upon which such preferred stock will be convertible into common stock, including the conversion price (or manner of calculation thereof);

A discussion of certain federal income tax considerations applicable to such preferred stock;

The relative ranking and preferences of such preferred stock as to dividend rights and rights upon the Company's liquidation, dissolution or winding up of its affairs;

Any limitations on issuance of any series of preferred stock ranking senior to or on a parity with such series of preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of affairs;

Any limitations on direct or beneficial ownership and restrictions on transfer, in each case as may be appropriate to preserve our status as a REIT; and

Any other specific terms, preferences, rights, limitations or restrictions of such preferred stock.

**Rank**

Unless otherwise specified in the prospectus supplement, the preferred stock will, with respect to dividend rights and rights upon our liquidation, dissolution or winding up, rank:

Senior to all classes or series of common stock, and to all equity securities ranking junior to such preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up;

On a parity with all equity securities the terms of which specifically provide that such equity securities rank on a parity with the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up; and

Junior to all equity securities the terms of which specifically provide that such equity securities rank senior to the preferred stock with respect to dividend rights or rights upon liquidation, dissolution or winding up.

**Dividends**

Holders of preferred stock of each series shall be entitled to receive, when, as and if declared by the board of directors, out of our assets legally available for payment, cash dividends (or dividends in kind or in other property if expressly permitted and described in the applicable prospectus supplement) at such rates and on such dates as will be set forth in the applicable prospectus supplement. Each such dividend shall be payable to holders of record as they appear on our stock transfer books on such record dates as shall be fixed by the board of directors.

Dividends on any series of preferred stock may be cumulative or non-cumulative, as provided in the applicable prospectus supplement. Dividends, if cumulative, will be cumulative from and after the date set forth in the prospectus supplement. If the board of directors fails to declare a dividend payable on a dividend payment date on any series of preferred stock for which dividends are non-cumulative, then the holders of such series of preferred stock will have no right to receive a dividend in respect of the dividend period ending on such dividend payment date, and we will have no obligation to pay the dividend accrued for such period, whether or not dividends on such series are declared payable on any future dividend payment date.

Unless otherwise specified in the applicable prospectus supplement, if any preferred stock of any series is outstanding, no full dividends shall be declared or paid or set apart for payment on the preferred stock of any other series ranking, as to dividends, on a parity with or junior to the preferred stock of such series for any period unless full dividends (which include all unpaid dividends in the case of cumulative dividend preferred stock) have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for such payment on the preferred stock of such series.

## **Table of Contents**

When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the preferred stock of any series and the shares of any other series of preferred stock ranking on a parity as to dividends with the preferred stock of such series, all dividends declared upon shares of preferred stock of such series and any other series of preferred stock ranking on a parity as to dividends with such preferred stock shall be declared pro rata among the holders of such series. No interest or sum of money in lieu of interest shall be payable in respect of any dividend payment or payments on preferred stock of such series which may be in arrears.

Until required dividends are paid, no dividends (other than in common stock or other capital stock ranking junior to the preferred stock of such series as to dividends and upon liquidation) shall be declared or paid, or set aside for payment, and no other distribution shall be declared or made upon the common stock or any other capital stock ranking junior to or on a parity with the preferred stock of such series as to dividends or upon liquidation. In addition, no common stock or any other capital stock ranking junior to or on a parity with the preferred stock of such series as to dividends or upon liquidation shall be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such stock) by the Company (except by conversion into or exchange for other capital stock ranking junior to the preferred stock of such series as to dividends and upon liquidation).

Any dividend payment made on a series of preferred stock shall first be credited against the earliest accrued but unpaid dividend due with respect to shares of preferred stock of such series which remains payable.

## **Redemption**

If so provided in the applicable prospectus supplement, any series of preferred stock will be subject to mandatory redemption or redemption at our option, as a whole or in part, in each case upon the terms, at the times and at the redemption prices set forth in such prospectus supplement.

The prospectus supplement relating to a series of preferred stock that is subject to mandatory redemption will specify the number of shares of such preferred stock that we shall redeem in each year commencing after a date to be specified, at a redemption price per share to be specified, together with an amount equal to all accrued and unpaid dividends thereon (which shall not, if such preferred stock does not have a cumulative dividend, include any accumulation in respect of unpaid dividends for prior dividend periods) to the date of redemption. We may pay the redemption price in cash or other property, as specified in the prospectus supplement. If the redemption price for preferred stock of any series is payable only from the net proceeds of our issuance of capital stock, the terms of such preferred stock may provide that, if no such capital stock shall have been issued or to the extent the net proceeds from any issuance are insufficient to pay in full the aggregate redemption price then due, such preferred stock shall automatically and mandatorily be converted into shares of the applicable capital stock pursuant to conversion provisions specified in the applicable prospectus supplement.

So long as any dividends on any series of preferred stock ranking on a parity as to dividends and distributions of assets with such series of the preferred stock are in arrears, no shares of any such series of the preferred stock will be redeemed (whether by mandatory or optional redemption) unless all such shares are simultaneously redeemed, and we will not purchase or otherwise acquire any such shares. However, this will not prevent the purchase or acquisition of preferred stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding preferred stock of such series and, unless the full cumulative dividends on all outstanding shares of any cumulative preferred stock of such series and any other stock of the Company's ranking on a parity with such series as to dividends and upon liquidation shall have been paid or contemporaneously are declared and paid for all past dividend periods, we shall not purchase or otherwise acquire directly or indirectly any preferred stock of such series (except by conversion into or exchange for stock ranking junior to the preferred stock of such series as to dividends and upon

liquidation). However, this will not prevent the purchase or acquisition of such preferred stock to preserve our REIT status or pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of preferred stock of such series.

## **Table of Contents**

If we are to redeem fewer than all of the outstanding preferred stock of any series, it will determine the number of shares to be redeemed and such shares may be redeemed pro rata from the holders of record of such shares in proportion to the number of such shares held by such holders (with adjustments to avoid redemption of fractional shares) or any other equitable method determined by us that will not result in the issuance of any excess shares.

We will mail a notice of redemption at least 30 days but not more than 60 days before the redemption date to each holder of record of preferred stock of any series to be redeemed. If notice of redemption of any preferred stock has been given and we have set aside the funds necessary for such redemption in trust for the benefit of the holders of any preferred stock so called for redemption, then from and after the redemption date dividends will cease to accrue on such preferred stock, such preferred stock shall no longer be deemed outstanding and all rights of the holders of such shares will terminate, except the right to receive the redemption price.

## **Liquidation Preference**

If there is any voluntary or involuntary liquidation, dissolution or winding up of our affairs, then, before any distribution or payment shall be made to the holders of common stock, or any other class or series of our capital stock ranking junior to the preferred stock in the distribution of assets upon any liquidation, dissolution or winding up, the holders of each series of preferred stock will be entitled to receive out of our assets legally available for distribution to shareholders liquidating distributions in the amount of the liquidation preference per share (set forth in the applicable prospectus supplement), plus an amount equal to all dividends accrued and unpaid thereon (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such preferred stock does not have a cumulative dividend). After payment of the full amount of the liquidating distributions to which they are entitled, the holders of preferred stock will have no right or claim to any of our remaining assets. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, our legally available assets are insufficient to pay the amount of the liquidating distributions on all outstanding preferred stock and the corresponding amounts payable on all shares of other classes or series of capital stock ranking on a parity with the preferred stock in the distribution of assets upon liquidation, dissolution or winding up, then the holders of the preferred stock and all other such classes or series of capital stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

If liquidating distributions shall have been made in full to all holders of preferred stock, our remaining assets shall be distributed among the holders of any other classes or series of capital stock ranking junior to the preferred stock upon liquidation, dissolution or winding up, according to their respective rights and preferences and in each case according to their respective number of shares.

## **Voting Rights**

Holders of preferred stock will not have any voting rights, except as set forth below or as otherwise from time to time required by law or as indicated in the applicable prospectus supplement.

Any series of preferred stock may provide that, so long as any shares of such series remain outstanding, the holders of such series may vote as a separate class on certain specified matters, which may include changes in our capitalization, amendments to our charter and mergers and dispositions.

The foregoing voting provisions will not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of such series of preferred stock shall have been redeemed or called for redemption upon proper notice and sufficient funds shall have been irrevocably deposited in trust to effect such redemption.

The provisions of a series of preferred stock may provide for additional rights, remedies, and privileges if dividends on such series are in arrears for specified periods, which rights and privileges will be described in the applicable prospectus supplement.

## **Table of Contents**

### **Conversion Rights**

The terms and conditions, if any, upon which shares of any series of preferred stock are convertible into common stock will be set forth in the prospectus supplement relating thereto. Such terms will include the number of shares of common stock into which the preferred stock is convertible, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at the option of the holders of the preferred stock or the Company, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of such preferred stock.

### **Restrictions on Ownership**

As discussed above under **DESCRIPTION OF COMMON STOCK** **Restrictions on Transfer**, for us to qualify as a REIT under the Code, not more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year, and the 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. Therefore, ownership and transfer of each series of preferred stock will be restricted in the same manner as the common stock.

All certificates representing preferred stock will bear a legend referring to the restrictions described above.

### **DESCRIPTION OF DEBT SECURITIES**

We may issue debt securities under one or more trust indentures to be executed by us and a specified trustee. The terms of the debt securities will include those stated in the indenture and those made a part of the indenture (before any supplements) by reference to the Trust Indenture Act of 1939, as amended (the **Trust Indenture Act**). The indentures will be qualified under the Trust Indenture Act.

The following description sets forth certain anticipated general terms and provisions of the debt securities to which any prospectus supplement may relate. The particular terms of the debt securities offered by any prospectus supplement (which terms may be different than those stated below) and the extent, if any, to which such general provisions may apply to the debt securities so offered will be described in the prospectus supplement relating to such debt securities. Accordingly, for a description of the terms of a particular issue of debt securities, investors should review both the prospectus supplement relating thereto and the following description. Forms of the senior indenture (as discussed herein) and the subordinated indenture (as discussed herein) have been filed as exhibits to the registration statement of which this prospectus is a part.

### **General**

The debt securities will be our direct obligations and may be either senior debt securities or subordinated debt securities. The indebtedness represented by subordinated securities will be subordinated in right of payment to the prior payment in full of our senior debt (as defined in the applicable indenture). Senior securities and subordinated securities will be issued pursuant to separate indentures (respectively, a senior indenture and a subordinated indenture), in each case between us and a trustee.

Except as set forth in the applicable indenture and described in a prospectus supplement relating thereto, the debt securities may be issued without limit as to aggregate principal amount, in one or more series, secured or unsecured, in each case as established from time to time in or pursuant to authority granted by a resolution of our board of directors or as established in the applicable indenture. All debt securities of one series need not be issued at the time



and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of such series, for issuance of additional debt securities of such series.

**Table of Contents**

The prospectus supplement relating to any series of debt securities being offered will contain the specific terms thereof, including, without limitation:

The title of such debt securities and whether such debt securities are senior securities or subordinated securities;

The aggregate principal amount of such debt securities and any limit on such aggregate principal amount;

The percentage of the principal amount at which such debt securities will be issued and, if other than the principal amount thereof, the portion of the principal amount thereof payable upon declaration of acceleration of the maturity thereof, or (if applicable) the portion of the principal amount of such debt securities which is convertible into common stock or preferred stock (if applicable), or the method by which any such portion shall be determined;

If convertible, any applicable limitations on the ownership or transferability of the common stock or preferred stock into which such debt securities are convertible;

The date or dates, or the method for determining the date or dates, on which the principal of such debt securities will be payable;

The rate or rates (which may be fixed or variable), or the method by which the rate or rates shall be determined, at which such debt securities will bear interest, if any;

The date or dates, or the method for determining such date or dates, from which any interest will accrue, the interest payment dates on which any such interest will be payable, the regular record dates for such interest payment dates, or the method by which any such date shall be determined, the person to whom such interest shall be payable, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

The place or places where the principal of (and premium, if any) and interest, if any, on such debt securities will be payable, such debt securities may be surrendered for conversion or registration of transfer or exchange and notices or demands to or upon us in respect of such debt securities and the applicable indenture may be served;

The period or periods within which, the price or prices at which and the terms and conditions upon which such debt securities may be redeemed, as a whole or in part, at our option, if we have such an option;

Our obligation, if any, to redeem, repay or purchase such debt securities pursuant to any sinking fund or analogous provision or at the option of a holder thereof, and the period or periods within which, the price or prices at which and the terms and conditions upon which such debt securities will be redeemed, repaid or purchased, as a whole or in part, pursuant to such obligation;

If other than U.S. dollars, the currency or currencies in which such debt securities are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies, and the terms and conditions relating thereto;

Whether the amount of payments of principal of (and premium, if any) or interest, if any, on such debt securities may be determined with reference to an index, formula or other method (which index, formula or method may, but need not be, based on a currency, currencies, currency unit or units or composite currencies) and the manner in which such amounts shall be determined;

Any additions to, modifications of or deletions from the terms of such debt securities with respect to the events of default or covenants set forth in the indenture;

Any provisions for collateral security for repayment of such debt securities;

Whether such debt securities will be issued in certificated and/or book-entry form;

## **Table of Contents**

Whether such debt securities will be in registered or bearer form and, if in registered form, the denominations thereof if other than \$1,000 and any integral multiple thereof and, if in bearer form, the denominations thereof and terms and conditions relating thereto;

The applicability, if any, of defeasance and covenant defeasance provisions of the applicable indenture;

The terms, if any, upon which such debt securities may be convertible into our common stock or preferred stock and the terms and conditions upon which such conversion will be effected, including, without limitation, the initial conversion price or rate and the conversion period;

Whether and under what circumstances Healthcare Realty will pay additional amounts as contemplated in the indenture on such debt securities in respect of any tax, assessment or governmental charge and, if so, whether the Company will have the option to redeem such debt securities in lieu of making such payment; and

Any other terms of such debt securities not inconsistent with the provisions of the applicable indenture. The debt securities may provide for less than the entire principal amount thereof to be payable upon declaration of acceleration of the maturity thereof. Special federal income tax, accounting and other considerations applicable to these original issue discount securities will be described in the applicable prospectus supplement.

The applicable indenture may contain provisions that would limit our ability to incur indebtedness or that would afford holders of debt securities protection in the event of a highly leveraged or similar transaction involving the Company or in the event of a change of control.

Restrictions on ownership and transfer of our common stock and preferred stock are designed to preserve the Company's status as a REIT and, therefore, may act to prevent or hinder a change of control. See DESCRIPTION OF PREFERRED STOCK Restrictions on Ownership. Investors should review the applicable prospectus supplement for information with respect to any deletions from, modifications of or additions to the events of default or covenants that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

## **Merger, Consolidation or Sale**

The applicable indenture will provide that we may consolidate with, or sell, lease or convey all or substantially all of our assets to, or merge with or into, any other corporation, provided that, in addition to certain other conditions and limitations:

Either we shall be the continuing corporation, or the successor corporation (if other than us) formed by or resulting from any such consolidation or merger or which shall have received the transfer of such assets shall expressly assume payment of the principal of (and premium, if any), and interest on, all of the applicable debt securities and the due and punctual performance and observance of all of the covenants and conditions contained in the applicable indenture;

Immediately after giving effect to such transaction and treating any indebtedness which becomes our obligation or an obligation of one of our subsidiaries as a result thereof as having been incurred by us or such subsidiary at the time of such transaction, no event of default under the applicable indenture, and no event which, after notice or the lapse of time, or both, would become such an event of default, shall have occurred and be continuing; and

An officer's certificate and legal opinion covering such conditions shall be delivered to the trustee.

#### **Covenants**

The applicable indenture will contain covenants requiring us to take certain actions and prohibiting it from taking certain actions. The covenants with respect to any series of debt securities will be described in the prospect