

AGREE REALTY CORP
Form 424B5
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Registration No. 333-201420

PROSPECTUS SUPPLEMENT
(To prospectus dated March 27, 2015)

2,500,000 Shares

Common Stock

We are selling 2,500,000 shares of common stock. Our common stock is listed on the New York Stock Exchange under the symbol ADC. The last reported sale price of our common stock on May 5, 2016 was \$42.88 per share.

To preserve our status as a real estate investment trust (REIT) for federal income tax purposes, we impose certain restrictions on the ownership of our stock. See Description of Common Stock Restrictions on Ownership and Transfer in this prospectus supplement and the accompanying prospectus.

Investment in our common stock involves risks. You should consider the risks that we have described in Risk Factors beginning on page S-3 of this prospectus supplement and page 3 of the accompanying prospectus, as well as those described in our most recent annual report on Form 10-K and the other reports we file with the Securities and Exchange Commission, before buying shares of our common stock.

	Per Share	Total
Public offering price	\$ 39.75	\$ 99,375,000
Underwriting discount	\$ 1.59	\$ 3,975,000
Proceeds, before expenses, to us	\$ 38.16	\$ 95,400,000

The underwriters have the option to purchase up to an additional 375,000 shares of common stock from us at the public offering price, less the underwriting discount and less any dividends or distributions payable on the shares initially purchased by the underwriters but not payable on such option shares, within 30 days from the date of this 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 supplement or the accompanying prospectus is

truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares to purchasers on or before May 10, 2016.

**RAYMOND JAMES
BAIRD**

**JEFFERIES
STIFEL**

**WELLS FARGO SECURITIES
JANNEY MONTGOMERY SCOTT**

BTIG CAPITAL ONE SECURITIES LADENBURG THALMANN WUNDERLICH

**The date of this prospectus supplement is May 4,
2016.**

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We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus supplement, the accompanying prospectus or any applicable free writing prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus supplement, the accompanying prospectus or any applicable free writing prospectus. This prospectus supplement and the accompanying prospectus do not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor do this prospectus supplement and the accompanying prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The information contained in this

prospectus supplement, the accompanying prospectus, any applicable free writing prospectus and the documents incorporated by reference herein or therein is accurate only as of their respective dates or on the date or dates which are specified in those documents. When we deliver this prospectus supplement and accompanying prospectus or make a sale pursuant to this prospectus supplement and accompanying prospectus, we are not implying that the information is current as of the date of the delivery or sale.

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ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement, which adds, changes or updates information contained in the accompanying prospectus and the documents incorporated by reference into the accompanying prospectus, is part of a shelf registration statement that we have filed with the Securities and Exchange Commission (the SEC). By using a shelf registration statement, we may sell, at any time and from time to time, in one or more offerings, any combination of the securities described in the accompanying prospectus. The exhibits to our registration statement contain the full text of certain contracts and other important documents we have summarized in the accompanying prospectus. Since these summaries may not contain all the information that you may find important in deciding whether to purchase the securities we offer, you should review the full text of these documents. The registration statement and the exhibits can be obtained from the SEC as indicated under the section entitled Incorporation of Certain Documents by Reference in this prospectus supplement. This prospectus supplement adds, updates and changes information contained in the accompanying prospectus and the information incorporated by reference herein and therein. If there is an inconsistency between the information in this prospectus supplement, on the one hand, and the accompanying prospectus or in a filing we made with the SEC under the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the date hereof, on the other hand, you should rely on the information in this prospectus supplement. You should carefully read both this prospectus supplement and the accompanying prospectus together with the additional information described below under the section entitled Incorporation of Certain Documents by Reference in this prospectus supplement.

We are not making an offer of these securities in any jurisdiction where the offer is not permitted. You should not assume that the information in this prospectus supplement or the accompanying prospectus is accurate as of any date other than the date on the front of the document.

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SUMMARY

This summary only highlights the more detailed information appearing elsewhere in this prospectus supplement or incorporated by reference in this prospectus supplement. It may not contain all of the information that is important to you. You should carefully read the entire prospectus supplement, the accompanying prospectus and the documents incorporated by reference in this prospectus supplement and the accompanying prospectus before deciding whether to invest in our securities.

Unless otherwise indicated or the context requires otherwise, in this prospectus supplement and the accompanying prospectus references to our company, we, us, and our refer to Agree Realty Corporation, a Maryland corporation and its consolidated subsidiaries, including Agree Limited Partnership, a Delaware limited partnership (the Operating Partnership), and its direct and indirect subsidiaries on a consolidated basis.

Our Company

We are a fully-integrated, self-administered and self-managed REIT primarily engaged in the ownership, acquisition, development and management of retail properties net leased to industry leading tenants. As of March 31, 2016, our portfolio consisted of 291 properties located in 42 states and totaling approximately 5.4 million square feet of gross leasable area.

As of March 31, 2016, our portfolio was approximately 99.5% leased and had a weighted average remaining lease term of approximately 11.2 years. In addition, as of March 31, 2016, substantially all of our annualized base rent was derived from national and large regional retail tenants and approximately 50.3% of our annualized base rent was derived from tenants with an investment grade credit rating or whose parents have an investment grade credit rating. Substantially all of our tenants are subject to net lease agreements. A net lease typically requires the tenant to be responsible for minimum monthly rent and property operating expenses, including property taxes, insurance and maintenance.

Our assets are held by, and all of our operations are conducted through, directly or indirectly, the Operating Partnership, of which we are the sole general partner and in which we held an approximate 98.4% interest as of March 31, 2016. Under the partnership agreement of the Operating Partnership, we, as the sole general partner, have exclusive responsibility and discretion in the management and control of the Operating Partnership.

We were incorporated in December 1993 under the laws of the State of Maryland. We believe that we have operated, and we intend to continue to operate, in such a manner to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the Code). In order to maintain our qualification as a REIT, we must, among other things, distribute at least 90% of our REIT taxable income each year and meet asset and income tests. Additionally, our charter limits ownership of our company, directly or constructively, by any single person to 9.8% of the value of our outstanding common stock and preferred stock, subject to certain exceptions. As a REIT, we are not subject to federal income tax with respect to that portion of our income that is distributed currently to our stockholders.

Our headquarters are located at 70 E. Long Lake Road, Bloomfield Hills, MI 48304 and our telephone number is (248) 737-4190. Our website is www.agreerealty.com. However, the information located on, or accessible from, our website is not, and should not be deemed to be, part of this prospectus supplement, the accompanying prospectus or any free writing prospectus or incorporated into any other filing that we submit to the SEC.

Recent Developments

Investment Activities

Since March 31, 2016, we have acquired or completed development of ten properties for an aggregate investment of approximately \$30.5 million. These properties are located in four states,

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leased to four tenants operating in the automotive service, convenience store, discount and specialty retail sectors and have a weighted-average remaining lease term of 18.1 years.

In the ordinary course of our business, we continually evaluate properties for acquisition. As of May 4, 2016, we are party to (i) 6 purchase and sale agreements for the acquisition of 26 properties for an aggregate purchase price of approximately \$117.8 million and (ii) 9 letters of intent for the acquisition of 9 properties for an aggregate purchase price of approximately \$52.7 million. These properties currently are leased to industry leading retailers operating in a number of sectors, including home improvement, grocery, automotive service, general merchandise, crafts and hobbies, quick service restaurant, specialty retail, convenience store, apparel, discount and financial services sectors. We are in various stages of due diligence and underwriting with respect to these investment opportunities and each is subject to typical outstanding conditions including, in the case of the properties under contract, customary conditions related to closing, and in the case of properties subject to letters of intent, the negotiation and execution of definitive purchase and sale agreements, as well as customary conditions related to closing. We can make no assurance that we will consummate any particular transaction or, if we do, what the terms or timing of any contemplated transaction will be.

Furthermore, we continually evaluate properties for development and redevelopment. As of May 4, 2016, we were party to (i) 11 development or redevelopment agreements for the development or redevelopment of 11 properties for an aggregate investment value of approximately \$24.7 million and (ii) 2 letters of intent for the development or redevelopment of 2 properties with an aggregate investment value of approximately \$5.6 million. These anticipated projects are on behalf of industry leading retailers operating in a number of sectors, including home improvement, automotive service, quick service restaurant, convenience store and specialty retail sectors. We are in various stages of due diligence and underwriting with respect to these investment opportunities and each is subject to typical conditions including, in the case of the properties under contract, customary conditions related to closing, and in the case of properties subject to letters of intent, the negotiation and execution of definitive leases and/or purchase and sale agreements, as well as customary conditions related to closing. We can make no assurance that we will consummate any particular transaction or, if we do, what the terms or timing of any contemplated transaction will be.

Charter Amendment

At our 2016 annual meeting of stockholders held on May 2, 2016, our stockholders approved amendments to our charter to (i) increase the number of authorized shares of our common stock from 28 million shares to 45 million shares, and (ii) provide that our board of directors may not classify or reclassify any authorized but unissued shares of our common stock into shares of our preferred stock or any class or series thereof.

Dividends

On May 2, 2016, we declared a dividend to our common stockholders of record as of June 30, 2016 of \$0.48 per share, payable on July 15, 2016.

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RISK FACTORS

*Investing in our common stock involves risks. Before purchasing the common stock offered by this prospectus supplement you should carefully consider the risk factors incorporated by reference in this prospectus supplement and the accompanying prospectus from our Annual Report on Form 10-K for the year ended December 31, 2015 filed with the SEC on March 11, 2016, as well as the risks, uncertainties and additional information set forth in our SEC reports on Forms 10-K, 10-Q and 8-K and in the other documents incorporated by reference in this prospectus supplement and the accompanying prospectus that we file with the SEC. For a description of these reports and documents, and for information about where you can find them, see *Incorporation of Certain Documents by Reference* in this prospectus supplement. The risks and uncertainties we discuss in this prospectus supplement and the accompanying prospectus and in the documents incorporated by reference in this prospectus supplement and the accompanying prospectus are those that we currently believe may materially affect the Company. Additional risks not presently known or that are currently deemed immaterial could also materially and adversely affect our financial condition, results of operations, business and prospects.*

Additional Risks Relating to this Offering

We cannot assure you that the proposed acquisitions will be completed on a timely basis or at all.

Our proposed acquisitions may not be completed, or may not be completed in the time frame, on the terms or in the manner currently anticipated, as a result of a number of factors, including the failure of the parties to satisfy one or more of the conditions to closing. There can be no assurance that the conditions to closing of the proposed acquisitions will be satisfied or waived or that other events will not intervene to delay or result in the failure to close the proposed acquisitions. We have incurred significant expenses in connection with the proposed acquisitions and delays in closing the acquisitions or the failure to close the acquisitions at all may result in our incurring significant additional costs in connection with such delay or termination of the purchase agreements, including the payment by us of certain costs, including the potential forfeiture by us, under certain circumstances, of a deposit. If we do not close the proposed acquisitions, we will have no designated use for a portion of the proceeds from this offering, which could result in significant dilution to our stockholders and adversely affect the trading price of our common stock.

The proposed acquisitions may not achieve their intended benefits.

There can be no assurance that we will be able to successfully realize the expected benefits of the proposed acquisitions, including acquisitions in our current pipeline. Our ability to realize the anticipated benefits of the proposed acquisitions will depend, in part, on our ability to integrate the acquired properties with our existing business. Integrating new properties and leveraging our existing property management platform to service these new properties and tenants will require significant time and focus from our management team and may divert attention from the day-to-day operations of the combined business, which could delay the achievement of our broader strategic objectives. In addition, the acquisition of new properties and the integration of these new properties into our existing business may result in material unanticipated problems, expenses and liabilities as a result of a number of factors, including:

market conditions in the markets that the newly acquired properties are located may result in higher than expected vacancy rates and lower than expected rental rates;

the newly acquired properties may be subject to reassessment, which may result in higher than expected tax payments; and

we may have underestimated the costs to make any necessary improvements to the newly acquired properties.

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Many of these risks will be outside of our control and any one of them could result in increased costs, decreases in the amount of expected revenue and diversion of our management's time and energy, which would adversely affect our business, financial condition, results of operations and/or cash flows.

Our management will have broad discretion in the use of the net proceeds from this offering and may allocate the net proceeds from this offering in ways that you and other stockholders may not approve.

Our management will have broad discretion in the use of the net proceeds, including for any of the purposes described in the section entitled "Use of Proceeds," and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. The failure of our management to use these funds effectively could harm our business. Pending another use, we may invest the net proceeds from this offering in short-term, investment-grade, interest-bearing securities. These investments may not yield a favorable return to our stockholders.

You may experience future dilution as a result of future equity offerings.

In order to raise additional capital, we may in the future offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that may not be the same as the price per share in this offering. Additionally, investors purchasing common stock or other securities in the future could have rights superior to existing stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by investors in this offering.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the documents we incorporate by reference each contain forward-looking statements within the meaning of the safe harbor from civil liability provided for by the Private Securities Litigation Reform Act of 1995 (set forth in Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Exchange Act). Forward-looking statements, which are based on certain assumptions and describe our future plans, strategies and expectations, are generally identifiable by use of the words anticipate, estimate, should, expect, believe, intend, may, will, seek, could, project, or similar not rely on forward-looking statements since they involve known and unknown risks, uncertainties and other factors which are, in some cases, beyond our control and which could materially affect actual results, performances or achievements. Factors which may cause actual results to differ materially from current expectations include, but are not limited to:

the factors included in our Annual Report on Form 10-K filed with the SEC on March 11, 2016, including those set forth under the headings Business, Risk Factors and Management's Discussion and Analysis of Financial Condition and Results of Operations;

global and national economic conditions and changes in general economic, financial and real estate market conditions; changes in our business strategy;

risks that our acquisition and development projects will fail to perform as expected;

the potential need to fund improvements or other capital expenditures out of operating cash flow;

financing risks, such as the inability to obtain debt or equity financing on favorable terms or at all;

the level and volatility of interest rates;

our ability to re-lease space as leases expire;

loss or bankruptcy of one or more of our major tenants;

a failure of our properties to generate additional income to offset increases in operating expenses;

our ability to maintain our qualification as a REIT for federal income tax purposes and the limitations imposed on our business by our status as a REIT; and

legislative or regulatory changes, including changes to laws governing REITs.

Any forward-looking statement speaks only as of the date on which it is made. New risks and uncertainties arise over time, and it is not possible for us to predict those events or how they may affect us. Except as required by law, we are

not obligated to, and do not intend to, update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. Accordingly, investors should use caution in relying on past forward-looking statements, which were based on results and trends at the time they were made, to anticipate future results or trends.

For a further discussion of these and other factors that could impact our future results, performance or transactions, see the section above entitled Risk Factors, including the risks incorporated therein from our most recent Annual Report on Form 10-K, as updated by our future filings.

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USE OF PROCEEDS

We estimate that our net proceeds from this offering, after deducting estimated offering expenses payable by us, will be approximately \$95.3 million (approximately \$109.6 million if the underwriters exercise their option to purchase additional shares in full). We intend to use the net proceeds of this offering to reduce amounts outstanding under our existing \$150 million unsecured revolving credit facility (the credit facility) with PNC Bank, National Association and certain other lenders, to fund property acquisitions and development activity, for working capital and for general corporate purposes.

As of May 3, 2016, the principal amount outstanding under the credit facility was approximately \$98 million with a weighted average interest rate of 1.79%. The credit facility matures on July 21, 2018, subject to a one-year extension option that we may exercise at our option, pursuant to certain customary conditions. We may use proceeds from borrowings under the credit facility to repay other outstanding debt, to fund our property acquisitions and development activity, and for working capital and other general corporate purposes.

Pending application of the net proceeds from this offering as described above, we may invest such proceeds in short-term, interest bearing investments that are consistent with our intention to continue to qualify as a REIT.

An affiliate of Capital One Securities, Inc. is a lender under our credit facility. To the extent that we use any of the net proceeds of this offering to repay borrowings outstanding under the credit facility, such affiliate will receive its proportionate share of any such amount. See Underwriting in this prospectus supplement.

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DESCRIPTION OF COMMON STOCK

At our 2015 annual meeting of stockholders held on May 4, 2015, our stockholders approved amendments to our charter that had the effect of (i) deleting an ownership limitation of 24% of our capital stock that had previously applied to certain founders of our company and their families and (ii) providing for an aggregate stock ownership limit of 9.8% (in value) of the aggregate outstanding shares of our capital stock and a common stock ownership limit of 9.8% (in value or in number of shares, whichever is more restrictive), of the aggregate outstanding shares of our common stock. As a result, the 9.8% ownership limits apply to all stockholders, other than those who have received ownership waivers from, and those for whom an excepted holder limit has been established by, our board of directors. The amendments also provide for an automatic transfer of shares to a charitable trust in the event a purported violation of our ownership limitations has been made. The amendments also made certain conforming, technical and other changes to our charter that we believe result in the ownership and transfer restrictions set forth in our charter being similar in most material respects to the restrictions on ownership and transfer that are now typically contained in the charters of many publicly traded REITs. Included in those technical changes is the elimination of the concept of excess stock, which is no longer required as a result of the other changes relating to the ownership and transfer restrictions set forth in our charter, including the elimination of all 8,000,000 shares of excess stock that were authorized for issuance under our charter.

Furthermore, at our 2016 annual meeting of stockholders held on May 2, 2016, our stockholders approved amendments to our charter to (i) increase the number of authorized shares of our common stock from 28 million shares to 45 million shares, and (ii) provide that our board of directors may not classify or reclassify any authorized but unissued shares of our common stock into shares of our preferred stock or any class or series thereof.

The description below takes into account these amendments to our charter and updates and supersedes the subsections entitled General and Restrictions on Ownership and Transfer set forth under the heading Description of Common Stock in the accompanying prospectus. The following summary does not purport to be complete and is subject to and qualified in its entirety by reference to Maryland law, our bylaws and our charter as amended by that certain amendment filed as an exhibit to our Current Report on Form 8-K filed with the SEC on May 6, 2015 and that certain amendment filed as an exhibit to our Current Report on Form 8-K filed with the SEC on May 3, 2016. See Where You Can Find More Information in the accompanying prospectus.

General

We have the authority to issue 49,000,000 shares of capital stock, par value \$.0001 per share, of which 45,000,000 shares are classified as shares of common stock, par value \$.0001 per share, and 4,000,000 shares are classified as shares of preferred stock, par value \$.0001 per share. Of our preferred stock, 200,000 shares are designated as Series A Junior Participating Preferred Stock, and 3,800,000 shares are undesignated. As of May 3, 2016, we had outstanding 20,762,843 shares of common stock and no shares of preferred stock.

The following description of our common stock sets forth certain 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 our preferred stock or upon the exercise of common stock warrants issued by us. 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 our charter and bylaws.

Subject to preferential rights with respect to any outstanding preferred stock, holders of our common stock will be

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entitled to receive dividends when, as and if authorized by our board of directors and declared by us, out of assets legally available therefor. Upon our liquidation, dissolution or winding up, holders of common stock will be entitled to share equally and ratably in any assets available for distribution to them, after payment or provision for payment of our debts and other liabilities and the preferential amounts owing with respect to any of our

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outstanding preferred stock. The common stock will possess voting rights in the election of directors and in respect of certain other corporate matters, with each share entitling the holder thereof to one vote. Holders of shares of common stock will not have cumulative voting rights in the election of directors. The shares of common stock are not convertible into any other class or series of stock. Holders of shares of common stock will not have preemptive rights, which means they have no right to acquire any additional shares of common stock that may be issued by us at a subsequent date. The common stock will, when issued in exchange for the consideration therefor, be fully paid and nonassessable and will not be subject to preemptive or similar rights. The common stock is listed on the NYSE under the symbol ADC.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A.

Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, not more than 50% of the value of our issued and outstanding Equity Stock (as defined below) 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 Equity 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. Our charter contains restrictions on the ownership and transfer of shares of Equity Stock to enable us to qualify as a REIT.

Subject to certain exceptions specified in our charter, our charter provides that no holder, other than an excepted holder, may beneficially own, or be deemed to own by virtue of the attribution provisions of the Code, more than 9.8% (in value or in number of shares, whichever is more restrictive) of the outstanding shares of our common stock, or more than 9.8% (in value) of the aggregate of the outstanding shares of all classes and series of our stock (collectively, the Equity Stock). We refer to each of these restrictions as an Ownership Limit and collectively as the Ownership Limits. Our board of directors may, in its sole and absolute discretion, prospectively or retroactively, waive either or both of the Ownership Limits with respect to a particular stockholder or establish a different limit on ownership (an excepted holder limit), which excepted holder limit is subject to adjustment from time to time, if our board of directors makes certain determinations set forth in our charter. As a condition of any such exemption, our board of directors may require a ruling from the Internal Revenue Service (IRS) or an opinion of counsel satisfactory to our board of directors in its sole and absolute discretion, as specified in our charter, in order to determine or ensure our status as a REIT, or such representations and/or undertakings from the person requesting the waiver as our board of directors may require in its sole and absolute discretion to make such determinations. Notwithstanding the receipt of any such ruling or opinion, our board of directors may impose such conditions or restrictions as it deems appropriate in connection with granting such an exception. Subject to the provisions of our charter, our charter provides that an underwriter or placement agent that participates in a public offering or a private placement of our Equity Stock, or an initial purchaser of our Equity Stock in a transaction reliant upon Rule 144A, may beneficially own or constructively own shares of Equity Stock in excess of the Ownership Limits, but only to the extent necessary to facilitate such public offering, private placement or Rule 144A transaction. The foregoing restrictions on transferability and ownership will not apply if the board of directors determines that it is no longer in our best interests to continue to qualify as a REIT. In addition, our charter provides that no person may beneficially or constructively own shares of Equity Stock to the extent that such ownership would result in our being closely held within the meaning of Section 856(h) of the Code or which would otherwise result in our failing to qualify as a REIT. If shares of Equity Stock which would cause us to be beneficially owned by less than 100 persons are issued or transferred to any person, our charter provides that such issuance or transfer shall be void ab initio, and the intended transferee

would acquire no rights to the stock; however, the board of directors may waive this transfer restriction if it determines that such transfer would not adversely affect our ability to continue to qualify as a REIT. Our charter provides that shares transferred in excess of the Ownership Limits

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and shares transferred that would cause us to be closely held or otherwise fail to qualify as a REIT will be automatically transferred to one or more trusts for the exclusive benefit of one or more charitable beneficiaries. Such transfer will be deemed to be effective as of the close of business on the business day prior to the purported transfer. Our charter further provides that the Prohibited Owner (as defined herein) will have no rights in the shares held by the trustee and will not benefit economically from ownership of any such shares held in trust by the trustee, will have no rights to dividends or other distributions and will not possess any rights to vote or other rights attributable to such shares held in trust. While these shares are held in trust, the trustee will be entitled to vote and to share in any dividends or other distributions with respect to shares of Equity Stock held in trust, which rights will be exercised for the exclusive benefit of the charitable beneficiary. Within 20 days of receiving notice from us that shares of Equity Stock have been transferred to the trust, the trustee will sell the shares to any person who may hold such shares without violating the limitations on ownership and transfer set forth in our charter. Upon such sale, the interest of the charitable beneficiary in the shares sold will terminate, and the trustee will distribute the net proceeds of the sale to the person who owned the shares of Equity Stock in violation of the Ownership Limits or the other ownership restrictions described above (the Prohibited Owner), who will receive the lesser of (1) the price paid by the Prohibited Owner for the shares or, if the Prohibited Owner did not give value for the shares in connection with the event causing the shares to be held in the trust, the market price of the shares on the day of the event causing the shares to be held in the trust and (2) the price per share received by the trustee from the sale or other disposition of the shares held in the trust. The trustee will reduce the amount payable to the Prohibited Owner by the amount of dividends and other distributions that have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the trustee and will pay any net sales proceeds in excess of the amount payable to the Prohibited Owner to the charitable beneficiary. In addition, such shares of Equity Stock held in trust are purchasable by us until the trustee has sold the shares at a price equal to or lesser of the price paid for the stock in the transaction that resulted in such transfer to the trust and the market price for the stock on the date we determine to purchase the stock.

In order for us to comply with our record keeping requirements, our charter requires that each beneficial or constructive owner of Equity Stock and each person (including stockholders of record) who holds stock for a beneficial or constructive owner, shall provide to us such information as we may request in order to determine our status as a REIT and to ensure compliance with the Ownership Limits. Our charter also requires each beneficial or constructive owner of a specified percentage of Equity Stock to provide, no later than January 30 of each year, written notice to us stating the name and address of such owner, the number of shares of Equity Stock beneficially or constructively owned, and a description of how such shares are held. In addition, each such stockholder must provide such additional information as we may request in order to determine the effect of such stockholder's ownership of Equity Stock on our status as a REIT and to ensure compliance with the limitations on the ownership of Equity Stock.

These Ownership Limits may have the effect of precluding acquisition of control of our company by a third party unless the board of directors determines that maintenance of REIT status is no longer in our best interest. No restrictions on transfer will preclude the settlement of transactions entered into through the facilities of the NYSE.

Shareholder Rights Plan

We have adopted a rights agreement, as amended, under which each holder of our common stock receives one preferred share purchase right for each outstanding share of common stock. Each right is attached to each share of common stock, is not currently exercisable and trades only with the shares of common stock. Each right will separate from the share of common stock to which it is attached and will become exercisable 10 days after a public announcement that a person or group has acquired common stock that would result in ownership of 15% or more of our shares of common stock. Upon the occurrence of such an event, each right would entitle the holder to purchase for an exercise price of \$70.00 one one-hundredth of a share of new Series A Junior

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Participating Preferred Stock, which is designed to have economic and voting rights generally equivalent to one share of common stock. If a person or group actually acquires 15% or more of our shares of common stock, each right held by the acquiring person or group (or their transferees) will become void, and each right held by our other stockholders will entitle those holders to purchase for the exercise price a number of shares of our common stock having a market value of twice the exercise price. If we, at any time after a person or group has become a 15% beneficial owner and acquired control of our board of directors, are involved in a merger or similar transaction with any person or group or sell assets to any person or group, each outstanding right would then entitle its holder to purchase for the exercise price a number of shares of such other company having a market value of twice the exercise price. In addition, if any person or group acquires 15% or more of our shares of common stock, we may, at our option and to the fullest extent permitted by law, exchange one share of common stock for each outstanding right. The rights are not exercisable until the above events occur and will expire on December 22, 2018, unless earlier exchanged or redeemed by us. We may redeem the rights for \$.001 per right under certain circumstances.

Classification of Board of Directors, Vacancies and Removal of Directors

Our board of directors is divided into three classes of directors, serving staggered three year terms. At each annual meeting of stockholders, the class of directors to be elected at the meeting generally will be elected for a three-year term and the directors in the other two classes will continue in office. Subject to the rights of any class or series to elect directors, a director may only be removed for cause by the affirmative vote of the holders of 80% of our outstanding shares of common stock entitled to vote generally in the election of directors, voting together as a single class. We believe that the classified board will help to assure the continuity and stability of our board of directors and our business strategies and policies as determined by our board of directors. The use of a staggered board may delay or defer a change in control of us or the removal of incumbent management.

Our charter and bylaws provide that, subject to any rights of holders of preferred stock, and unless the board of directors otherwise determines, any vacancies may be filled by a vote of the stockholders or a majority of the remaining directors, though less than a quorum, except vacancies created by the increase in the number of directors, which only may be filled by a vote of the stockholders or a majority of the entire board of directors. In addition, our charter and bylaws provide that, subject to any rights of holders of preferred stock to elect additional directors under specified circumstances, only a majority of the board of directors may increase or decrease the number of persons serving on the board of directors. These provisions could temporarily prevent stockholders from enlarging the board of directors and from filling the vacancies created by such removal with their own nominees.

Advance Notice Provisions for Stockholder Nominations and Stockholder Proposals

Our charter and bylaws establish an advance notice procedure for stockholders to make nominations of candidates for director or bring other business before an annual meeting of stockholders.

Our bylaws provide that (i) only persons who are nominated by, or at the direction of, the board of directors, or by a stockholder who has given timely written notice containing specified information to our secretary prior to the meeting at which directors are to be elected, will be eligible for election as directors and (ii) at an annual meeting, only such business may be conducted as has been brought before the meeting by, or at the direction of, the board of directors or by a stockholder who has given timely written notice to our secretary of such stockholder's intention to bring such business before such meeting. In general, for notice of stockholder nominations or proposed business (other than

business to be included in our proxy statement under SEC Rule 14a-8) to be conducted at an annual meeting to be timely, such notice must be received by us not less than 120 days nor more than 150 days prior to the first anniversary of the date of mailing of the notice for the previous year's annual meeting. Our bylaws also establish

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