

CapLease, Inc.
Form 424B5
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PROSPECTUS SUPPLEMENT
(To prospectus dated February 14, 2011)

2,800,000 Shares of 7.25% Series C Cumulative Redeemable Preferred Stock
(Liquidation Preference \$25.00 Per Share)

CapLease, Inc.

We have entered into a sales agreement with MLV & Co. LLC, or MLV, relating to shares of our 7.25% Series C Cumulative Redeemable Preferred Stock, which we refer to as the Series C Preferred Stock, offered by this prospectus supplement and the accompanying prospectus. In accordance with the terms of the sales agreement, we may offer and sell up to 2,800,000 shares of the Series C Preferred Stock, from time to time through MLV as our agent for the offer.

The Series C Preferred Stock is listed on the New York Stock Exchange, or NYSE, under the symbol "LSE PrC." On March 14, 2013, the closing price of the Series C Preferred Stock on the NYSE was \$26.74 per share.

Sales of the shares of the Series C Preferred Stock, if any, may be made by means of ordinary brokers' transactions on the NYSE or otherwise at market prices prevailing at the time of the sale, at prices related to the prevailing market prices or at negotiated prices.

The Series C Preferred Stock is subject to an ownership limit of 9.9% of the value or number of all outstanding shares of capital stock, which is designed to preserve our qualification as a real estate investment trust for federal income tax purposes. See "Description of the Series C Preferred Stock – Restrictions on Ownership" on page S-15 of this prospectus supplement and "Restrictions on Ownership" on page 27 of the accompanying prospectus for more information about these restrictions.

The compensation to the sales agent for sales of the Series C Preferred Stock will be a commission equal to up to 2.0% of the gross sales price of the shares sold pursuant to the sales agreement. In connection with the sale of the Series C Preferred Stock on our behalf, MLV may be deemed to be an "underwriter" within the meaning of the Securities Act of 1933, as amended, and the compensation of MLV may be deemed to be underwriting commissions or discounts. Subject to the terms and conditions of the sales agreement, the sales agent will use commercially reasonable efforts to sell the Series C Preferred Stock on our behalf. Under the terms of the sales agreement, we may also sell the Series C Preferred Stock to the sales agent as principal at prices agreed upon at the time of sale. If we sell the Series C Preferred Stock to the sales agent as principal, we will enter into a separate terms agreement with the sales agent. There is no arrangement for funds to be received in escrow, trust or similar account. See "Plan of Distribution."

Investing in the Series C Preferred Stock involves risks. You should carefully read and consider the information under "Risk Factors" on page S-1 of this prospectus supplement, as well as in our most recent Annual Report on Form 10-K and any subsequent Quarterly Reports on Form 10-Q or Current Reports on Form 8-K incorporated herein by reference, before buying shares of the Series C Preferred Stock.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of

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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.

MLV & Co.

The date of this prospectus supplement is March 15, 2013

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You should rely only on the information contained or incorporated by reference in this prospectus supplement and the accompanying prospectus and any written communication from us or the sales agent specifying the final terms of any offering. We have not authorized anyone else to provide you with additional or different information. If anyone provides you with additional or different information, you should not rely on it. An offer to sell these securities will not be made in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement and the accompanying prospectus, as well as information we previously filed with the Securities and Exchange Commission (the “SEC”) and incorporated by reference, is only accurate as of the date

of the front cover of this prospectus supplement or accompanying prospectus or as of the date given in the incorporated document, as applicable. Our business, financial condition, liquidity, results of operations and prospects may have changed since that date.

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ABOUT THIS PROSPECTUS SUPPLEMENT

This document is in two parts. The first part is this prospectus supplement, which describes the specific terms of the Series C Preferred Stock, this offering and other matters relating to us. The second part, the accompanying prospectus, gives more general information about our company and securities we may offer from time to time, some of which does not apply to this offering or the Series C Preferred Stock. It is important for you to read and consider all information contained in this prospectus supplement and the accompanying prospectus, including the documents we have referred you to in “Where You Can Find More Information.” The information incorporated by reference is considered part of this prospectus supplement, and information we later file with the SEC may automatically update and supersede this information.

To the extent any inconsistency or conflict exists between the information included or incorporated by reference in this prospectus supplement and the information included in the accompanying prospectus, the information included or incorporated by reference in this prospectus supplement updates and supersedes the information in the accompanying prospectus.

When used in this prospectus supplement, except where the context otherwise requires, the terms “we,” “our,” “us” and “the Company” refer to CapLease, Inc. and its majority-owned subsidiaries. All interests in our properties are held through special purpose entities which are separate and distinct legal entities.

Except where otherwise indicated or where the context is clear, the portfolio statistics in this prospectus supplement represent or are calculated from our carry value for financial reporting purposes before depreciation and amortization. With respect to our loan portfolio, we have adjusted our carry value to exclude a \$0.5 million general loss reserve.

References in this prospectus supplement to our “Single Tenant Owned Property Portfolio” include all of our owned property investments, in each case other than two properties we own in Omaha, Nebraska which are no longer leased primarily by a single tenant.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement, the accompanying prospectus and the information incorporated by reference into this prospectus supplement and the accompanying prospectus contain 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 "Exchange Act"). Forward-looking statements relate to expectations, beliefs, projections, future plans and strategies, anticipated events or trends and similar expressions concerning matters that are not historical facts. In some cases, you can identify forward-looking statements by terms such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "potential," "should," "strategy," "will" and other words of similar meaning. The forward-looking statements are based on our beliefs, assumptions and expectations of future performance, taking into account all information currently available to us. These beliefs, assumptions and expectations can change as a result of many possible events or factors, not all of which are known to us or are within our control. If a change occurs, our business, financial condition, liquidity and results of operations may vary materially from those expressed in our forward-looking statements. In connection with the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, we are hereby identifying important factors that could cause actual results and outcomes to differ materially from those contained in any forward-looking statement. Such factors include, but are not limited to:

- our ability to renew leases as they expire or lease-up vacant space on favorable terms or at all;
- our ability to close new investment transactions that we have in our pipeline;
- our ability to make additional investments in a timely manner or on acceptable terms;
- current credit market conditions and our ability to obtain long-term financing for our asset investments in a timely manner and on terms that are consistent with those we project when we invest in the asset;
 - access to capital markets and capital market conditions;
 - adverse changes in the financial condition of the tenants underlying our investments;
- our ability to make scheduled payments on our debt obligations and to repay or refinance our debt obligations at maturity on favorable terms or at all;
- increases in our financing costs (including as a result of LIBOR rate increases), our general and administrative costs and/or our property expenses;
 - changes in our industry, the industries of our tenants, interest rates or the general economy;
 - impairments in the value of the collateral underlying our investments;
 - the degree and nature of our competition; and
- the other factors discussed in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference into this prospectus supplement and the accompanying prospectus, including those described under the caption "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the fiscal year ended December 31, 2012.

Any forward-looking statement speaks only as of its date. We undertake no obligation to update or publicly release any revisions to forward-looking statements to reflect events, circumstances or changes in expectations after the date made.

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RISK FACTORS

An investment in the Series C Preferred Stock involves certain risks, including those described below and in the section entitled “Risk Factors” beginning on page 1 of the accompanying prospectus and those incorporated by reference herein. Before you invest in the Series C Preferred Stock, you should carefully consider these risks, together with the information in the section entitled “Cautionary Statement Regarding Forward-Looking Statements” and other information contained in or incorporated by reference in this prospectus supplement and the accompanying prospectus.

The Series C Preferred Stock is subordinate to our debt, and your interests could be diluted by the issuance of additional preferred stock, including additional issuances of Series C Preferred Stock, and by other transactions.

The Series C Preferred Stock ranks junior to all of our existing and future debt. Our future debt may include restrictions on our ability to pay dividends to preferred stockholders. Our charter currently authorizes the issuance of up to 100,000,000 shares of preferred stock in one or more classes or series and up to 500,000,000 shares of common stock. As of the date hereof, we have 2,647,000 shares of our 8.125% Series A Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the “Series A Preferred Stock”), and 2,941,073 shares of our 8.375% Series B Cumulative Redeemable Preferred Stock, par value \$0.01 per share (the “Series B Preferred Stock”), issued and outstanding, all of which rank pari passu with the Series C Preferred Stock, and we also have 1,700,000 shares of Series C Preferred Stock issued and outstanding. In addition, our board of directors has the power to reclassify unissued common stock as preferred stock, and to amend our charter from time to time, without any action by our stockholders, to increase or decrease the aggregate number of shares of our stock or the number of shares of stock of any class or series, including preferred stock, that we have authority to issue. The issuance of additional shares of Series C Preferred Stock or additional preferred stock on parity with or senior to the Series C Preferred Stock would dilute the interests of the holders of the Series C Preferred Stock, and any issuance of preferred stock senior to the Series C Preferred Stock or of additional indebtedness could affect our ability to pay dividends on, redeem or pay the liquidation preference on the Series C Preferred Stock. Other than the conversion right afforded to holders of Series C Preferred Stock that may occur in connection with a change of control as described under “Description of the Series C Preferred Stock — Conversion Rights” below, none of the provisions relating to the Series C Preferred Stock contains any provisions affording the holders of the Series C Preferred Stock protection in the event of a highly leveraged or other transaction, including a merger or the sale, lease or conveyance of all or substantially all our assets or business, that might adversely affect the holders of the Series C Preferred Stock, so long as the rights of the Series C Preferred Stock holders are not materially and adversely affected.

The Series C Preferred Stock has not been rated.

We have not sought to obtain a rating for the Series C Preferred Stock. No assurance can be given, however, that one or more rating agencies might not independently determine to issue such a rating or that such a rating, if issued, would not adversely affect the market price of the Series C Preferred Stock. In addition, we may elect in the future to obtain a rating of the Series C Preferred Stock, which could adversely impact the market price of the Series C Preferred Stock. Ratings only reflect the views of the rating agency or agencies issuing the ratings and such ratings could be revised downward or withdrawn entirely at the discretion of the issuing rating agency if in its judgment circumstances so warrant. Any such downward revision or withdrawal of a rating could have an adverse effect on the market price of the Series C Preferred Stock.

As a holder of Series C Preferred Stock you will have extremely limited voting rights.

Your voting rights as a holder of Series C Preferred Stock will be limited. Shares of our common stock are the only class carrying full voting rights. Voting rights for holders of Series C Preferred Stock exist primarily with respect to

the ability to elect (together with the holders of the Series A Preferred Stock, the Series B Preferred Stock, and any other classes or series of our preferred stock or other equity securities that we may later authorize or issue that by their terms are on parity with the Series C Preferred Stock upon which similar voting rights have been or are in the future conferred) two additional directors to our board of directors in the event that six or more quarterly dividends (whether or not consecutive) payable on the Series C Preferred Stock are in arrears, and with respect to voting on amendments to our charter or articles supplementary that materially and adversely affect the rights of the holders of Series C Preferred Stock or create additional classes or series of our stock that are senior to the Series C Preferred Stock, provided that in any event adequate provision for redemption has not been made. Other than the limited circumstances described in this prospectus supplement, holders of Series C Preferred Stock will not have any voting rights. See “Description of the Series C Preferred Stock — Voting Rights.”

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The change of control conversion feature in the Series C Preferred Stock may not adequately compensate you, and the change of control conversion and redemption features of the Series C Preferred Stock may make it more difficult for a party to take over our company or discourage a party from taking over our company.

Upon the occurrence of a Change of Control (as defined herein) the result of which our common stock and the common securities of the acquiring or surviving entity (or American Depositary Receipts (“ADRs”) representing such securities) are not listed on the NYSE, the NYSE MKT (the “NYSE MKT”), or the NASDAQ Stock Market (“NASDAQ”), or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE MKT or NASDAQ, holders of the Series C Preferred Stock will have the right (unless, prior to the Change of Control Conversion Date (as defined herein), we have provided or provide notice of our election to redeem the Series C Preferred Stock) to convert some or all of their Series C Preferred Stock into our common stock (or equivalent value of alternative consideration) and under these circumstances we will also have a special optional redemption right to redeem the Series C Preferred Stock. See “Description of the Series C Preferred Stock — Conversion Rights” and “— Special Optional Redemption.” Upon such a conversion, the holders will be limited to a maximum number of shares of our common stock equal to the Share Cap (as defined herein) multiplied by the number of shares of Series C Preferred Stock converted. If the Common Stock Price (as defined herein) is less than \$2.805 (which is approximately 50% of the per-share closing sale price of our common stock on January 16, 2013), subject to adjustment, the holders will receive a maximum of 8.9127 shares of our common stock per share of Series C Preferred Stock, which may result in a holder receiving value that is less than the liquidation preference of the Series C Preferred Stock. In addition, those features of the Series C Preferred Stock may have the effect of inhibiting a third party from making an acquisition proposal for our company or of delaying, deferring or preventing a change of control of our company under circumstances that otherwise could provide the holders of our common stock and Series C Preferred Stock with the opportunity to realize a premium over the then-current market price or that stockholders may otherwise believe is in their best interests.

Listing on the NYSE does not guarantee a market for the Series C Preferred Stock and the market price and trading volume of the Series C Preferred Stock may fluctuate significantly.

The Series C Preferred Stock is a relatively new issue of securities with only a limited trading market. Although the Series C Preferred Stock is listed on the NYSE, an active and liquid trading market to sell the Series C Preferred Stock has not developed and may not ever develop or be sustained. Since the Series C Preferred Stock has no stated maturity date, investors seeking liquidity may be limited to selling their shares in the secondary market. If an active trading market does not develop, the market price and liquidity of the Series C Preferred Stock may be materially and adversely affected. Even if an active public market does develop, we cannot guarantee you that the market price for the Series C Preferred Stock will equal or exceed the price you pay for your shares.

The market determines the trading price for the Series C Preferred Stock and may be influenced by many factors, including, but not limited to:

- prevailing interest rates;
- the market for similar securities;
- general economic and financial market conditions;
- our issuance, as well as the issuance by our subsidiaries, of additional preferred equity or debt securities or indebtedness; and
- our financial condition, cash flows, liquidity, results of operations, funds from operations and prospects.

Market interest rates may have an effect on the value of the Series C Preferred Stock.

One of the factors that will influence the price of the Series C Preferred Stock will be the dividend yield on the Series C Preferred Stock (as a percentage of the price of the Series C Preferred Stock) relative to market interest rates. An increase in market interest rates, which are currently at low levels relative to historical rates, may lead prospective purchasers of the Series C Preferred Stock to expect a higher dividend yield, and higher interest rates would likely increase our borrowing costs and potentially decrease funds available for distribution. Thus, higher market interest rates could cause the market price of the Series C Preferred Stock to decrease.

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Our ability to pay dividends on the Series C Preferred Stock is limited by the requirements of Maryland law and the terms of our debt obligations.

Our ability to pay dividends on the Series C Preferred Stock is limited by the laws of Maryland. Under applicable Maryland law, a Maryland corporation generally may not make a distribution if, after giving effect to the distribution, the corporation would not be able to pay its debts as the debts become due in the usual course of business, or the corporation's total assets would be less than the sum of its total liabilities plus, unless the corporation's charter provides otherwise, the amount that would be needed, if the corporation were dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of stockholders whose preferential rights are superior to those receiving the distribution. Accordingly, we generally may not make a distribution on the Series C Preferred Stock if, after giving effect to the distribution, we would not be able to pay our debts as they become due in the usual course of business or our total assets would be less than the sum of our total liabilities plus, unless the terms of such class or series provide otherwise, the amount that would be needed to satisfy the preferential rights upon dissolution of the holders of shares of any class or series of preferred stock then outstanding, if any, with preferences senior to those of the Series C Preferred Stock.

In addition to the limits of Maryland law, we are and may in the future become a party to debt agreements that restrict or prevent the payment of dividends on, or the purchase or redemption of, our shares. Under certain circumstances, these agreements could restrict or prevent the payment of dividends on or the purchase or redemption of Series C Preferred Stock. These restrictions may be indirect (for example, covenants requiring us to maintain specified levels of net worth or a minimum fixed charge coverage ratio) or direct.

OUR COMPANY

CapLease, Inc. is a real estate investment trust (“REIT”) that primarily owns and manages a diversified portfolio of single tenant commercial real estate properties subject to long-term leases to high credit quality tenants. Many of the properties we own are subject to a net lease, or a lease that requires the tenant to pay all or substantially all property operating expenses, such as utilities, real estate taxes, insurance and routine maintenance.

Our tenants are primarily large public companies or their significant operating subsidiaries and governmental entities with investment grade credit ratings, defined as a published senior unsecured credit rating of BBB-/Baa3 or above from one or both of Standard & Poor’s (“S&P”) and Moody’s Investors Service (“Moody’s”). We also imply an investment grade credit rating for tenants that are not publicly rated by S&P or Moody’s but (i) are 100% owned by an investment grade parent, (ii) for which we have obtained a private investment grade rating from either S&P or Moody’s, (iii) for which we have evaluated the creditworthiness of the tenant and estimated a credit rating that is consistent with an investment grade rating from S&P or Moody’s, or (iv) are governmental entity branches or units of another investment grade rated governmental entity.

During 2012, we continued to grow our investment portfolio with approximately \$190 million of real property acquisitions and new build-to-suit commitments, and we expect to continue our growth in 2013 and future years.

As of December 31, 2012, some of the highlights of our investment portfolio were as follows:

- approximately \$1.9 billion owned property portfolio;
 - own approximately 12.1 million square feet with 92.9% occupancy;
- 71 properties in 25 states and leases with 43 different tenants across the Single Tenant Owned Property Portfolio;
 - ten largest tenants all rated investment grade with an average credit rating of A;
- 84% of our Single Tenant Owned Property Portfolio invested in properties leased to investment grade or implied investment grade tenants;
 - weighted average tenant credit rating of A- across the Single Tenant Owned Property Portfolio;
- weighted average remaining lease term of approximately six years across the Single Tenant Owned Property Portfolio; and
 - well diversified portfolio by property type, geography, tenant and tenant industry.

For further information regarding CapLease and our financial information, you should refer to our recent filings with the SEC. See “Where You Can Find More Information.”

USE OF PROCEEDS

We intend to use the net proceeds from the sale of Series C Preferred Stock to which this prospectus supplement relates for general corporate purposes, which are expected to primarily include repurchase or redemption of the Series A Preferred Stock and our 7.50% convertible senior notes. We currently have \$19.2 million of the convertible senior notes outstanding, and they will mature in October 2027, but we may call them for redemption at any time for a cash price equal to 100% of the principal amount of the notes redeemed, plus any accrued and unpaid interest.

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RATIO OF EARNINGS TO COMBINED FIXED CHARGES AND PREFERRED STOCK DIVIDENDS

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

	2012	2011	Year Ended December 31, 2010	2009	2008
Ratio of earnings to combined fixed charges and preferred stock dividends	0.83	0.90	0.79	0.82	0.74

We computed the ratio of earnings to combined fixed charges and preferred stock dividends by dividing earnings by the sum of fixed charges and dividends on our outstanding shares of preferred stock. Earnings have been calculated by adding fixed charges to net income (loss), and then subtracting any capitalized interest. Fixed charges consist of interest incurred (whether expensed or capitalized), amortization of loan origination fees and the portion of rental expense deemed to be the equivalent of interest.

DESCRIPTION OF THE SERIES C PREFERRED STOCK

The description of the particular terms of the Series C Preferred Stock set forth below supplements, and to the extent inconsistent therewith replaces, the description of the general terms and provisions of the preferred stock set forth in the accompanying prospectus, to which description reference is hereby made. The following summary of the material terms and provisions of the Series C Preferred Stock does not purport to be complete and is qualified in its entirety by reference to the pertinent sections in the Articles Supplementary, as amended, setting forth the terms of the Series C Preferred Stock, which we sometimes refer to as the “articles supplementary,” our charter, our bylaws and applicable laws.

General

Our authorized capital stock consists of 500,000,000 shares of common stock, \$0.01 par value per share, and 100,000,000 shares of preferred stock, \$0.01 par value per share. Our charter authorizes our board of directors to issue shares of preferred stock and to classify and reclassify any unissued shares of common stock or preferred stock into one or more classes or series of stock. The preferred stock may be issued from time to time with such designations, preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption as shall be determined by the board of directors. See “Description of Preferred Stock” in the accompanying prospectus.

Our board of directors has adopted articles supplementary to our charter establishing the number and fixing the terms, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms or conditions of redemption of a series of our preferred stock classified as 7.25% Series C Cumulative Redeemable Preferred Stock. Our board of directors has authorized up to 4,500,000 shares of Series C Preferred Stock, of which, as of the date hereof, 1,700,000 shares are issued and outstanding. Our board of directors may, without the consent of the holders of the Series C Preferred Stock, authorize and issue additional shares of Series C Preferred Stock from time to time.

The Series C Preferred Stock will be issued and maintained in book-entry form registered in the name of the nominee, The Depository Trust Company. See “Book-Entry Securities.”

The transfer agent, registrar and dividends disbursement agent for the shares of Series C Preferred Stock is American Stock Transfer & Trust Company.

Ranking

The Series C Preferred Stock ranks senior to our common stock and any other of our equity securities that we may later authorize or issue that by their terms rank junior to the Series C Preferred Stock (the “Junior Preferred Stock”), with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up. The Series C Preferred Stock ranks *pari passu* with the Series A Preferred Stock and the Series B Preferred Stock, and with any other classes or series of our preferred stock or other equity securities that we may later authorize or issue and that by their terms are on parity with the Series C Preferred Stock (the “Parity Preferred Stock”), with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up. The Series C Preferred Stock ranks junior to any equity securities that we may later authorize or issue and that by their terms rank senior to the Series C Preferred Stock (the “Senior Preferred Stock”), with respect to the payment of dividends and the distribution of assets in the event of our liquidation, dissolution or winding up. Any such authorization or issuance would require the affirmative vote of the holders of at least two-thirds of the outstanding shares of Series C Preferred Stock (such series voting together as a separate class). Any convertible debt securities that we may issue are not considered to be equity securities for these purposes. The Series C Preferred Stock

ranks junior to all of our existing and future indebtedness.

Dividends

Holders of the Series C Preferred Stock are entitled to receive, when and as authorized by our board of directors and declared by us, out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 7.25% per annum of the \$25.00 per share liquidation preference, equivalent to \$1.8125 per annum per share. Dividends on the Series C Preferred Stock will be payable quarterly in equal amounts in arrears on or about the 15th day of January, April, July and October of each year (or, if not a business day, the next business day). The first dividend payment date for the Series C Preferred Stock sold in this offering will be April 15, 2013, and the dividend payable on that date will be in the amount of \$0.4027778 per share. If any date on which dividends are first payable is not a business day, then the dividend is paid on the next succeeding business day, and no interest or additional dividends or other sums accrues as a result of any such delay. Dividends payable on the Series C Preferred Stock for any dividend period, including any prorated partial dividend period, will be computed on the basis of a 360-day year consisting of twelve 30-day months. We will pay dividends to holders of record as they appear in our stock records at the close of business on the applicable record date, which will be the last day of the calendar month that immediately precedes the calendar month in which the applicable dividend payment date falls or such other date designated by our board of directors for the payment of dividends that is not more than 30 days nor fewer than 10 days prior to the dividend payment date.

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We will not declare or pay any dividends on the Series C Preferred Stock or set apart funds for the payment of dividends if the terms of any of our agreements, including agreements relating to our indebtedness, prohibit that declaration, payment or setting apart of funds or provide that the declaration, payment or setting apart of funds is a breach of or a default under that agreement, or if the declaration, payment or setting apart of funds is restricted or prohibited by law. We are, and may in the future become, a party to agreements that restrict or prevent the payment of dividends on, or the purchase or redemption of, our shares. Under certain circumstances, these agreements could restrict or prevent the payment of dividends on or the purchase or redemption of Series C Preferred Stock. These restrictions may be indirect (for example, covenants requiring us to maintain specified levels of net worth or a minimum fixed charge coverage ratio) or direct. We do not believe that these restrictions currently have any adverse impact on our ability to pay dividends on the Series C Preferred Stock.

Notwithstanding the foregoing, dividends on the Series C Preferred Stock will accumulate whether or not we have earnings, whether or not there are funds legally available for the payment of dividends and whether or not dividends are authorized. Accumulated but unpaid dividends on the Series C Preferred Stock will not bear interest, and the holders of the Series C Preferred Stock will not be entitled to any dividends in excess of full cumulative dividends as described above. All of our dividends on Series C Preferred Stock, including any capital gain dividends, will be credited to the previously accumulated dividends on the Series C Preferred Stock. We will credit any dividend made on the Series C Preferred Stock first to the earliest accumulated and unpaid dividend due.

We will not declare or pay any dividends or other distributions, or set apart any funds for the payment of dividends or other distributions, on our common stock or any other shares of Junior Preferred Stock, if any, or redeem or otherwise acquire our common stock or other shares of Junior Preferred Stock, unless we also have declared and either paid or set apart for payment the full cumulative dividends on the Series C Preferred Stock and all shares of Senior Preferred Stock and Parity Preferred Stock, including the Series A Preferred Stock and the Series B Preferred Stock, for all past dividend periods. This restriction will not limit our redemption or other acquisition of shares under an employee benefit plan or to ensure our status as a REIT.

If we do not declare and either pay or set apart for payment the full cumulative dividends on the Series C Preferred Stock and all shares of Parity Preferred Stock, including the Series A Preferred Stock and the Series B Preferred Stock, the amount which we have declared will be allocated pro rata to the Series C Preferred Stock and to each series of Parity Preferred Stock so that the amount declared for each share of Series C Preferred Stock and for each share of each series of Parity Preferred Stock is proportionate to the accumulated and unpaid dividends on those shares.

Liquidation Rights

In the event of our liquidation, dissolution or winding up, the holders of the Series C Preferred Stock will be entitled to be paid out of our assets legally available for distribution to our stockholders (after payment or provision for payment of all debts and other liabilities) liquidating distributions in cash of \$25.00 per share, plus any accumulated and unpaid dividends (whether or not authorized or declared) to, but not including, the date of the payment. Holders of Series C Preferred Stock will be entitled to receive this liquidating distribution before we distribute any assets to holders of our common stock or Junior Preferred Stock. The rights of holders of Series C Preferred Stock to receive their liquidation preference would be subject to the proportionate rights of each parity stock, including the Series A Preferred Stock and the Series B Preferred Stock, and preferential rights of the holders of any series of shares that is senior to the Series C Preferred Stock. Written notice will be given to each holder of Series C Preferred Stock of any such liquidation, dissolution or winding up no fewer than 30 days and no more than 60 days prior to the payment date. After payment of the full amount of the liquidating distribution to which they are entitled, the holders of Series C Preferred Stock will have no right or claim to any of our remaining assets. If we consolidate or merge with any other entity, sell, lease, transfer or convey all or substantially all of our property or business, or engage in a statutory share exchange, we will not be deemed to have liquidated, dissolved or wound up. In the event our assets are insufficient to

pay the full liquidating distributions to the holders of Series C Preferred Stock and all other classes or series of our equity securities ranking on a parity with the Series C Preferred Stock, including the Series A Preferred Stock and the Series B Preferred Stock, then we will distribute our assets to the holders of Series C Preferred Stock and all other classes or series of parity securities ratably in proportion to the full liquidating distributions they would have otherwise received. In determining whether a distribution (other than upon voluntary or involuntary dissolution), by dividend, redemption or other acquisition of shares or otherwise, is permitted under Maryland law, amounts that would be needed, if we were