AGREE REALTY CORP
Form 424B5
March 13, 2018

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The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any state or jurisdiction where the offer or sale is not permitted.

Subject to Completion, dated March 13, 2018

PROSPECTUS SUPPLEMENT
(To prospectus dated June 2, 2017)

3,000,000 Shares

Common Stock

This is a public offering of common stock of Agree Realty Corporation, par value $.0001 per share. We expect to enter into a forward sale agreement with Citibank N.A., which we refer to in this capacity as the forward purchaser. In connection with the forward sale agreement, the forward purchaser or its affiliates are borrowing from third parties and selling to the underwriters an aggregate of 3,000,000 shares of our common stock that will be delivered in this offering (or an aggregate of 3,450,000 shares of our common stock if the underwriters option to purchase additional shares is exercised in full).

We will not initially receive any proceeds from the sale of shares of our common stock by the forward purchaser. We expect to physically settle the forward sale agreement (by the delivery of shares of our common stock) and receive proceeds from the sale of those shares of our common stock upon one or more forward settlement dates no later than March 1, 2019. We may also elect to cash settle or net share settle all or a portion of our obligations under the forward sale agreement if we conclude it is in our best interest to do so. If we elect to cash settle the forward sale agreement, we may not receive any proceeds and we may owe cash to the forward purchaser in certain circumstances. If we elect to net share settle the forward sale agreement, we will not receive any proceeds, and we may owe shares of our common stock to the forward purchaser in certain circumstances. See Underwriting Forward Sale Agreement.

If the forward purchaser or its affiliate does not sell on the anticipated closing date of this offering all of the shares of our common stock to be sold by it to the underwriters, we will issue and sell to the underwriters a number of shares of our common stock equal to the number of shares of our common stock that the forward purchaser or its affiliate did not sell and the number of shares underlying the forward sale agreement will be decreased in respect of the number of shares that we issue and sell.

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 March 12, 2018 was $49.48 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 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-5 of this prospectus supplement and page 3 of the accompanying prospectus, as well as the risks described in our most recent Annual Report on Form 10-K, which is incorporated by reference herein, 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	$	$
Underwriting discount[(1)]	$	$
Proceeds, before expenses, to us[(2)]	$	$

(1) See Underwriting.

(2) We expect to receive net proceeds from the sale of the shares of our common stock, before fees and estimated expenses, of $ million upon full physical settlement of the forward sale agreement, which we expect to occur no later than March 1, 2019. For the purposes of calculating the aggregate net proceeds, before expenses, to us, we have assumed that the forward sale agreement will be fully physically settled based on the initial forward sale price of $ per share, which is the public offering price less the underwriting discount shown above. The forward sale price is subject to adjustment pursuant to the terms of the forward sale agreement, and the actual proceeds, if any, to us will be calculated as described in this prospectus supplement. Although we expect to settle the forward sale agreement entirely by the full physical delivery of shares of our common stock in exchange for cash proceeds, we may elect cash settlement or net share settlement for all or a portion of our obligations under the forward sale agreement. See Underwriting Forward Sale Agreement for a description of the forward sale agreement.

We have granted the underwriters a 30-day option from the date of this prospectus supplement, exercisable in whole or in part from time to time, to purchase up to an additional 450,000 shares of our common stock at the initial price to the public less the underwriting discount, subject to certain adjustments. Upon any exercise of such option, we will use our commercially reasonable best efforts to enter into an additional forward sale agreement with the forward purchaser in respect of the number of shares that are subject to the exercise of such option. Unless the context requires otherwise, the term forward sale agreement as used in this prospectus supplement includes any additional forward sale agreement that we enter into in connection with the exercise, by the underwriters, of their option to purchase additional shares of our common stock. In the event that we enter into any additional forward sale agreement, if the forward purchaser or its affiliates does not deliver and sell all of the shares of our common stock to be sold by it in connection with the exercise of such option, we will issue and sell to the underwriters a number of shares of our common stock equal to the number of shares that the forward purchaser or its affiliates does not deliver and sell, and the number of shares underlying the forward sale agreement will not be increased in respect of the number of shares that we issue and sell.

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 , 2018.

Citigroup

The date of this prospectus supplement is March , 2018

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Prospectus Supplement

Prospectus

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 into 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 into 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. You should not assume that the information contained in this prospectus supplement, the accompanying prospectus, and any applicable free writing prospectus is accurate as of any date other than the date on the front of the document, or that any information we have incorporated by reference herein or therein is accurate on any date

subsequent to the date of the document incorporated by reference, even though this prospectus supplement is delivered or securities are sold on a later date. When we deliver this prospectus supplement and the accompanying prospectus or make a sale pursuant to this prospectus supplement and the 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 to and updates information contained in the accompanying prospectus and the documents incorporated by reference into the accompanying prospectus, is part of an automatic shelf registration statement that we have filed with the Securities and Exchange Commission (the SEC) as a well known seasoned issuer as defined in Rule 405 under the Securities Act of 1933, as amended (the Securities Act). Under the automatic shelf registration process, we may, over time, sell 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 titled Incorporation of Certain Documents by Reference in this prospectus supplement. This prospectus supplement adds to, updates or changes information contained in the accompanying prospectus and the information incorporated by reference herein and therein. Accordingly, to the extent there is an inconsistency between the information in this prospectus supplement and the accompanying prospectus, you should rely on the information in this prospectus supplement. In addition, any statement we make in a filing with the SEC under the Securities Exchange Act of 1934, as amended (the Exchange Act) prior to the termination of this offering that adds to, updates or changes information contained in an earlier filing we made with the SEC shall be deemed to modify and supersede such information in the earlier filing. You should carefully read both this prospectus supplement and the accompanying prospectus together with the additional information described below under the section titled 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.

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SUMMARY

This summary only highlights the more detailed information appearing elsewhere in this prospectus supplement or incorporated by reference into 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 into 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 the Company, we, us, and our refer to Agree Realty Corporation, a Maryland corporatio 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 real estate investment trust (REIT) primarily focused on the ownership, acquisition, development and management of retail properties net leased to industry leading tenants. We were founded in 1971 by our current Executive Chairman, Richard Agree, and our common stock was listed on the New York Stock Exchange in 1994.

As of December 31, 2017, our portfolio consisted of 436 properties located in 43 states and totaling approximately 8.7 million square feet of gross leasable area.

As of December 31, 2017, our portfolio was approximately 99.7% leased and had a weighted average remaining lease term of approximately 10.2 years. A significant majority of our properties are leased to national tenants and approximately 43.9% of our annualized base rent was derived from tenants, or parent entities thereof, with an investment grade credit rating from S&P Global Ratings, Moody s Investors Service, Fitch Ratings or the National Association of Insurance Commissioners. 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 a 98.8% interest as of December 31, 2017. 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 or number of shares, whichever is more restrictive, of our outstanding common stock and 9.8% of the value of the aggregate of all of our outstanding 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. The requirements to maintain our qualification as a REIT are discussed in greater detail in the accompanying prospectus. See Description of Common Stock Restrictions on Ownership and Transfer in the accompanying prospectus, and Material Federal Income Tax

Considerations in this prospectus supplement.

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.

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Recent Developments

Investment Activities

Since December 31, 2017, we have acquired or completed the development of 23 properties for an aggregate investment of approximately $83.0 million. These properties are located in 13 states and leased to 16 tenants operating in a number of leading sectors, including off-price retail, auto parts, tire and auto service, convenience stores, crafts and novelties and home improvement. The properties have a weighted-average remaining lease term of 15.1 years.

In the ordinary course of our business, we continually evaluate properties for acquisition. As of March 13, 2018, we are party to (i) sale agreements or letters of intent for the acquisition of 18 properties for an aggregate purchase price of approximately $98.6 million. These properties are leased to industry-leading retailers operating in a number of sectors, including auto parts, tire and auto service, health and fitness, home improvement and grocery. We are in various stages of due diligence and underwriting with respect to these investment opportunities and each is subject to customary closing conditions. We can make no assurances 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 March 13, 2018, we have had six development or redevelopment projects on-going for an aggregate investment value of approximately $42.6 million. These projects are on behalf of industry-leading retailers operating in a number of sectors, including off-price retail, tire and auto service, grocery and home furnishings. This does not include anticipated projects which are currently in the pre-development phase.

The Offering

The offering terms are summarized below solely for convenience. For a more complete description of the terms of our common stock, see the section entitled Description of Common Stock in the accompanying prospectus.

Issuer

Agree Realty Corporation

Shares of Common Stock Offered by the Forward Purchaser or Affiliates Thereof

3,000,000 shares of common stock (or 3,450,000 shares of common stock if the underwriters option to purchase additional shares is exercised in full).(1)(2)

Shares of Common Stock to Be Outstanding Immediately after the Offering

30,992,597 shares of common stock.(3)

Shares of Common Stock to Be Outstanding after the Settlement of the Forward Sale Agreement Assuming Full Physical Settlement

33,992,597 shares of common stock (or 34,442,597 shares of common stock if the underwriters option to purchase additional shares is exercised in full).(2)(3)

Accounting Treatment of the Transaction

Before any issuance of shares of our common stock upon physical settlement of the forward sale agreement, such forward sale agreement will be reflected in our diluted earnings per share calculations using the treasury stock method. Under this method, the number of shares of our common stock used in calculating diluted earnings per share is deemed to be increased by the excess, if any, of the number of shares of our common stock that would be issued upon full physical settlement of such forward sale agreement

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over the number of shares of our common stock that could be purchased by us in the market (based on the average market price during the period) using the proceeds receivable upon full physical settlement (based on the adjusted forward sale price at the end of the reporting period). Consequently, prior to physical settlement or net share settlement of the forward sale agreement and subject to the occurrence of certain events, we anticipate there will be no dilutive effect on our earnings per share except during periods when the average market price of our common stock is above the per share forward sale price, which is initially $ (which is the price at which the underwriter agrees to buy the shares of our common stock offered hereby), subject to adjustment based on a floating interest rate factor equal to a specified daily rate less a spread, and subject to decrease by an amount per share specified in the forward sale agreement on each of certain dates specified in the forward sale agreement. However, if we decide to physically settle or net share settle the forward sale agreement, delivery of our shares on any physical settlement or net share settlement of the forward sale agreement will result in dilution to our earnings per share and return on equity.

Conflicts of Interest

All of the proceeds of this offering (excluding proceeds paid to us with respect to any shares of our common stock that we may sell to the underwriters in lieu of the forward purchaser or its affiliates selling our common stock to the underwriters) will be paid to the forward purchaser. See Use of Proceeds. As a result, Citigroup Global Markets Inc. or its affiliates will receive more than 5% of the net proceeds of this offering, not including the underwriting discount.

New York Stock Exchange Symbol

ADC

Use of Proceeds

We will not initially receive any proceeds from the sale of shares of our common stock by the forward purchaser or its affiliates.

We expect to receive net proceeds of approximately $ million (or $ million if the underwriters option to purchase additional shares is exercised in full) (in each case after deducting fees and estimated expenses related to the forward sale agreement and this offering), subject to certain adjustments pursuant to the forward sale agreement, only upon full physical settlement of the forward sale agreement, which we expect will be no later than March 1, 2019.[(1)(2)(3)(4)]

We intend to use the net proceeds, if any, received upon the settlement of the forward sale agreement (and from the sale of any shares of common stock sold by us to the underwriters in connection with this offering) to fund acquisition and development activity, with any remaining proceeds being held for general working capital and other corporate purposes, including the reduction of the

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outstanding balance on our revolving credit facility, if any. See Use of Proceeds .

Risk Factors

You should read carefully the Risk Factors beginning on page S-5 of this prospectus supplement and page 3 of the accompanying prospectus for certain considerations relevant to an investment in our common stock.

(1) The forward purchaser has advised us that it or its affiliates intend to acquire shares of common stock to be sold under this prospectus supplement through borrowings from third-party stock lenders. Subject to the occurrence of certain events, we will not be obligated to deliver shares of common stock, if any, under the forward sale agreement until final physical or net share settlement of the forward sale agreement, which we expect will be no later than March 1, 2019. Except in certain circumstances, and subject to certain conditions, we have the right to elect cash settlement or net share settlement under the forward sale agreement. See Underwriting Forward Sale Agreement for a description of the forward sale agreement.

(2) We have granted the underwriters an option to purchase up to an additional 450,000 shares of our common stock. The numbers in the summary assume that we have entered into an additional forward sale agreement with respect to the exercise by the underwriters of their option to purchase additional shares, which we are obligated to use our commercially reasonable best efforts to do.

(3) The number of shares of common stock to be outstanding after the physical settlement of the forward sale agreement is based on 30,992,597 shares of common stock outstanding as of February 20, 2018.

(4) The forward sale price is subject to adjustment pursuant to the terms of the forward sale agreement, and any net proceeds to us are subject to settlement of the forward sale agreement.

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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 discussed in this prospectus supplement and 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, 2017, as well as the risks, uncertainties and additional information set forth in documents that we file with the SEC after the date of this prospectus supplement and which are deemed incorporated by reference into this prospectus supplement and the accompanying prospectus. 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, liquidity, results of operations, business and prospects.

Risks Related to the Forward Sale Agreement

Provisions contained in the forward sale agreement could result in substantial dilution to our earnings per share and return on equity or result in substantial cash payment obligations.

If the forward purchaser or its affiliate does not sell all the shares of our common stock to be sold by it pursuant to the terms of the underwriting agreement (including because insufficient shares of our common stock were made available by securities lenders for borrowing at a stock loan cost below a specified threshold), we will issue and sell directly to the underwriters the number of shares of our common stock not sold by the forward purchaser or its affiliate and, under such circumstances, the number of shares of our common stock underlying the forward sale agreement will be decreased by the number of shares of our common stock that we issue and sell. The stock loan market is volatile, and it is uncertain whether sufficient shares of our common stock will be made available prior to closing.

The forward purchaser will have the right to accelerate the forward sale agreement (with respect to all or, in certain cases, any portion of the transaction under such forward sale agreement that the forward purchaser determines is affected by an event described below) and require us to settle on a date specified by the forward purchaser if:

in the forward purchaser s commercially reasonable judgment, it or its affiliate (x) is unable to hedge in a commercially reasonable manner its exposure under such forward sale agreement because insufficient shares of our common stock have been made available for borrowing by securities lenders or (y) would incur a stock borrow cost in excess of a specified threshold to hedge in a commercially reasonable manner its exposure under such forward sale agreement;
we declare any dividend, issue or distribution on shares of our common stock (a) payable in cash in excess of specified amounts, (b) that constitutes an extraordinary dividend under the forward sale agreement, (c) payable in securities of another company as a result of a spin-off or similar transaction, or (d) of any other type of securities (other than our common stock), rights, warrants or other assets for payment at less than the prevailing market price;
certain ownership thresholds applicable to the forward purchaser and its affiliates are exceeded;
an event is announced that if consummated would result in a specified extraordinary event (including certain mergers or tender offers, as well as certain events involving our nationalization, or insolvency, or a delisting of our common stock) or the occurrence of a change in law or disruption in the forward purchaser s ability to hedge its exposure under

the forward sale agreement; or

certain other events of default or termination events occur, including, among others, any material misrepresentation made in connection with such forward sale agreement or our insolvency (each as more fully described in the forward sale agreement).

Provisions contained in the forward sale agreement could result in substantialdilution to our earnings per share and

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The forward purchaser s decision to exercise its right to accelerate the settlement of the forward sale agreement will be made irrespective of our interests, including our need for capital. In such cases, we could be required to issue and deliver shares of our common stock under the physical settlement provisions of the forward sale agreement irrespective of our capital needs, which would result in dilution to our earnings per share and return on equity.

We expect that the forward sale agreement will settle no later than March 1, 2019. However, the forward sale agreement may be settled earlier in whole or in part at our option. Subject to certain conditions, we have the right to elect physical, cash or net share settlement under the forward sale agreement. The forward sale agreement will be physically settled by delivery of shares of our common stock, unless we elect to cash settle or net share settle such forward sale agreement. Delivery of shares of our common stock upon physical settlement (or, if we elect net share settlement, upon such settlement to the extent we are obligated to deliver shares of our common stock) will result in dilution to our earnings per share and return on equity. If we elect cash settlement or net share settlement with respect to all or a portion of the shares of our common stock underlying the forward sale agreement, we expect the forward purchaser (or an affiliate thereof) to purchase a number of shares of our common stock in secondary market transactions over an unwind period to:

return shares of our common stock to securities lenders in order to unwind the forward purchaser s hedge (after taking into consideration any shares of our common stock to be delivered by us to the forward purchaser, in the case of net share settlement); and

if applicable, in the case of net share settlement, deliver shares of our common stock to us to the extent required in settlement of such forward sale agreement.

In addition, the purchase of shares of our common stock in connection with the forward purchaser or its affiliate unwinding the forward purchaser s hedge positions could cause the price of shares of our common stock to increase over such time (or prevent a decrease over such time), thereby increasing the amount of cash we would owe to the forward purchaser (or decreasing the amount of cash that the forward purchaser would owe us) upon a cash settlement of the forward sale agreement or increasing the number of shares of our common stock we would deliver to the forward purchaser (or decreasing the number of shares of our common stock that the forward purchaser would deliver to us) upon net share settlement of the forward sale agreement.

The forward sale price that we expect to receive upon physical settlement of the forward sale agreement will be subject to adjustment on a daily basis based on a floating interest rate factor equal to a specified daily rate less a spread and will be decreased based on certain specified amounts during the term of the forward sale agreement. If the specified daily rate is less than the spread on any day, the interest factor will result in a daily reduction of the forward sale price. As of the filing of this prospectus supplement, the specified daily rate was greater than the spread. If the weighted average price at which the forward purchaser (or its affiliate) is able to purchase shares during the applicable unwind period under the forward sale agreement is above the relevant forward sale price, in the case of cash settlement, we would pay the applicable forward purchaser under such forward sale agreement an amount in cash equal to the difference or, in the case of net share settlement, we would deliver to the forward purchaser a number of shares of our common stock having a value equal to the difference. Thus, we could be responsible for a potentially substantial cash payment in the case of cash settlement. If the weighted average price at which the forward purchaser (or its affiliate) is able to purchase shares during the applicable unwind period under the forward sale agreement is below the relevant forward sale price, in the case of cash settlement, we would be paid the difference in cash by the forward purchaser under the forward sale agreement or, in the case of net share settlement, we would receive from the forward purchaser a number of shares of our common stock having a value equal to the difference. See Underwriting Forward Sale Agreement for information on the forward sale agreement.

In case of our bankruptcy or insolvency, the forward sale agreement would automatically terminate, and we would not receive the expected proceeds from the sale of shares of our common stock.

If we or a regulatory authority with jurisdiction over us institutes, or we consent to, a proceeding seeking a judgment in bankruptcy or insolvency or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors rights, or we or a regulatory authority with jurisdiction over us presents a petition for our winding-up or liquidation, or we consent to such a petition, the forward sale agreement will automatically terminate. If the forward sale agreement so terminates, we would not be obligated to deliver to

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the forward purchaser any shares of our common stock not previously delivered, and the forward purchaser would be discharged from its obligation to pay the relevant forward sale price per share in respect of any shares of our common stock not previously settled. Therefore, to the extent that there are any shares of our common stock with respect to which such forward sale agreement has not been settled at the time of the commencement of any such bankruptcy or insolvency proceedings, we would not receive the relevant forward sale price per share in respect of those shares of our common stock.

The market price of our stock may vary substantially.

The market price of our common stock could be volatile, and investors in our common stock may experience a decrease in the value of their shares, including decreases unrelated to our operating performance or prospects. Among the market conditions that may affect the market price of our common stock are the following:

- Changes in interest rates;
- Our financial condition and operating performance and the performance of other similar companies;
- Actual or anticipated variations in our quarterly results of operations;
- The extent of investor interest in our company, real estate generally or commercial real estate specifically;
- The reputation of REITs generally and the attractiveness of their equity securities in comparison to other equity securities, including securities issued by other real estate companies, and fixed income securities;
- Changes in expectations of future financial performance or changes in estimates of securities analysts;
- Fluctuations in stock market prices and volumes;
- Announcements by us or our competitors of acquisitions, investments or strategic alliances;
- Adverse market reaction to any increased indebtedness we may incur in the future;
- The passage of legislation or other regulatory developments that adversely affect us or the assets in which we seek to invest; and
- General market and economic conditions.

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

There are a number of risks and uncertainties relating to the pending and recently completed acquisitions described in Summary Recent Developments above. For example, the pending 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 will be satisfied or waived or that other events will not intervene to delay or result in the failure to close the pending acquisitions. The agreements related to the pending acquisitions may be terminated by the parties thereto under certain circumstances. Delays in closing or the failure to close the pending acquisitions in their entirety or at all may result in our incurring significant additional costs in connection with such delay or failure and/or failing to achieve the anticipated benefits of the pending and recently completed acquisitions. Any delay in closing or a failure to close could have a negative impact on our business and the trading price of our common stock.

In the event the pending acquisitions described in Summary Recent Developments above are not consummated and we elect to physically settle the forward sale agreement, we expect to use the proceeds from such settlement(s) to fund the construction of on-going highly leased development projects, with any remaining proceeds being held for general working capital and other corporate purposes, including the reduction of the outstanding balance on our unsecured senior line of credit, if any. However, we would have broad authority to use such net proceeds for other purposes that may not be accretive to our earnings per share and funds from operations per share. Affiliates of each of the underwriters are lenders under our

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unsecured senior line of credit and will receive a pro rata portion of the net proceeds from the physical settlement of the forward sale agreement to the extent that we use any such proceeds to reduce the outstanding balance thereunder. See Underwriting.

The U.S. federal income tax treatment of the cash that we might receive from cash settlement of the forward sale agreement is unclear and could jeopardize our ability to meet the REIT qualification requirements.

In the event that we elect to settle the forward sale agreement for cash and the settlement price is below the applicable forward sale price, we would be entitled to receive a cash payment from the forward purchaser. Under Section 1032 of the Code, generally, no gains and losses are recognized by a corporation in dealing in its own shares, including pursuant to a securities futures contract, as defined in the Code by reference to the Exchange Act. Although we believe that any amount received by us in exchange for our stock would qualify for the exemption under Section 1032 of the Code, because it is not entirely clear whether the forward sale agreement qualifies as a securities futures contract, the U.S. federal income tax treatment of any cash settlement payment we receive is uncertain. In the event that we recognize a significant gain from the cash settlement of the forward sale agreement, we might not be able to satisfy the gross income requirements applicable to REITs under the Code. In that case, we may be able to rely upon the relief provisions under the Code in order to avoid the loss of our REIT status. Even if the relief provisions apply, we will be subject to a 100% tax on the greater of (i) the excess of 75% of our gross income (excluding gross income from prohibited transactions) over the amount of such income attributable to sources that qualify under the 75% test or (ii) the excess of 95% of our gross income (excluding gross income from prohibited transactions) over the amount of such gross income attributable to sources that qualify under the 95% test, as discussed in the section titled Material Federal Income Tax Considerations in this prospectus supplement, multiplied in either case by a fraction intended to reflect our profitability. In the event that these relief provisions were not available, we could lose our REIT status under the Code.

The U.S. federal income tax treatment of the cash that we might receive from cash settlement of the forward sale ag