

AGREE REALTY CORP

Form S-8

March 21, 2007

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As filed with the Securities and Exchange Commission on March 21, 2007.

Registration No. 333-

**SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549**

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

**Agree Realty Corporation**  
(Exact Name of Registrant as Specified in its Charter)

**Maryland**  
(State of Other Jurisdiction of  
Incorporation or Organization)

**38-3148187**  
(I.R.S. Employer  
Identification Number)

**31850 Northwestern Highway  
Farmington Hills, Michigan**  
(Address of Principal Executive Offices)

**48334**  
(Zip Code)

**2005 Agree Realty Corporation Equity Incentive Plan**  
(Full Title of the Plan)

**Richard Agree**  
**President and Chief Executive Officer**  
**Agree Realty Corporation**  
**31850 Northwestern Highway**  
**Farmington Hills, Michigan 48334**  
(Name and Address of Agent for Service)  
**(248) 737-4190**  
(Telephone Number, Including Area Code, of Agent for Service)

*Copy to:*  
**Gina E. Betts**  
**Locke Liddell & Sapp LLP**  
**2200 Ross Avenue, Suite 2200**  
**Dallas, Texas 75201**  
**(214) 740-8000**

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price per Share(1)</b>	<b>Proposed Maximum Aggregate Offering Price(1)</b>	<b>Amount of Registration Fee(2)</b>
Common Stock, \$0.0001 par value	1,000,000	\$32.86	\$32,860,000	\$1,009.00

- (1) Estimated solely for the purpose of calculating the registration fee. This fee was calculated pursuant to Rule 457(h) under the Securities Act of 1933, as amended, (the Securities Act ) on the basis of the average of the high and low prices for the Common Stock on the New York Stock Exchange on March 14, 2007.
  - (2) Calculated pursuant to Section 6(b) of the Securities Act.
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Opinion of Locke Liddell & Sapp LLP

Consent of Virchow, Krause & Company, LLP

Consent of BDO Seidman, LLP

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**PART I**  
**INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS**

**Item 1. Plan Information.**

The information specified by Item 1 of Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act of 1933, as amended, and the introductory note to Part I of Form S-8.

**Item 2. Registrant Information and Employee Plan Annual Information.**

The information specified by Item 2 of Part I of Form S-8 is omitted from this Registration Statement in accordance with Rule 428 under the Securities Act and the introductory note to Part I of Form S-8.

**PART II**  
**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. Incorporation of Documents by Reference.**

The documents set forth below are hereby incorporated by reference in this Registration Statement.

- (i) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2006.
- (ii) All other reports filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, since the end of the fiscal year covered by the 2005 Form 10-K.
- (iii) The description of our Common Stock, par value \$0.00010 per share, set forth in our Form 8-A filed March 18, 1994.

All documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters the securities offered hereby then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof commencing on the respective dates on which such documents are filed. Any statement contained in a document incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in this Registration Statement or in any other subsequently filed document which also is or is deemed to be incorporated by reference in this Registration Statement modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed to constitute a part of this Registration Statement, except as such statement is so modified or superceded.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

We are a Maryland corporation. Our officers and directors are and will be indemnified under Maryland law and our articles of incorporation, as amended, against certain liabilities. Our charter requires us to indemnify our directors

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and officers to the fullest extent permitted from time to time by the laws of the State of Maryland. The Maryland General Corporation Law permits a corporation to indemnify its directors and officers (i) against judgments, penalties, fines, settlements, and reasonable expenses actually incurred in connection with any proceeding to which they are made a party by reason of their service in those capacities, unless it is established that the act or omission of the director or officer was material to the matter giving rise to the proceeding and (a) was committed in bad faith or (b) was the result of active and deliberate dishonesty, (ii) the director or officer actually received an improper personal benefit in money, property or services, or (iii) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

The Maryland General Corporation Law permits the charter of a Maryland corporation to include a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages, subject to specified restrictions. Our charter contains such a provision. The law does not, however, permit the liability of directors and officers to the corporation or its stockholders to be limited to the extent that (1) it is proved that the person actually received an improper personal benefit or (2) a judgment or other final adjudication is entered in a proceeding based on a finding that the person's action, or failure to act was material to the cause of action adjudicated in the proceeding; and was (a) committed in bad faith or (b) the result of active and deliberate dishonesty.

We maintain liability insurance for each director and officer for certain losses arising from claims or charges made against them while acting in their capacities as our directors or officers.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>
3.1	Articles of Incorporation and Articles of Amendment of the Company (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-11 (Registration Statement No. 33-73858, as amended (Agree S-11)))
3.2	Bylaws of the Company (incorporated by reference to Exhibit 3.3 to Agree S-11)
4.1	Rights Agreement by and between Agree Realty Corporation and BankBoston, N.A. as Rights Agent Dated as of December 7, 1998 (incorporated by reference to Exhibit 4.1 to the Company's Form 8-K filed on December 7, 1998)
5.1	Opinion of Locke Liddell & Sapp LLP*
10.1	First Amended and Restated Agreement of Limited Partnership of Agree Limited Partnership, dated as of April 22, 1994, by and among the Company, Richard Agree, Edward Rosenberg and Joel Weiner (incorporated by reference to Exhibit 10.6 to the Company's Form 10-K for the year ended December 31, 1996 (the 1996 Form 10-K))
10.2	Amended and Restated Registration Rights Agreement, dated July 8, 1994 by and among the Company, Richard Agree, Edward Rosenberg and Joel Weiner (incorporated by reference to Exhibit 10.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 1994)
10.3	Contribution Agreement, dated as of April 21, 1994, by and among the Company, Richard Agree, Edward Rosenberg and the co-partnerships named therein (incorporated by reference to Exhibit 10.10 to the 1996 Form 10-K)
10.4	

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Agree Realty Corporation Profit Sharing Plan (incorporated by reference to Exhibit 10.13 to the 1996 Form 10-K)

- 10.5 Line of Credit Agreement by and among Agree Limited Partnership, the Company, the lender parties thereto, and Michigan National Bank as Agent (incorporated by reference to Exhibit 10.10 to the Company's Form 10-K for the year ended December 31, 1995)

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<b>Exhibit Number</b>	<b>Description</b>
10.6	First amendment to \$5 million business loan agreement dated September 21, 1997 between Agree Limited Partnership and Michigan National Bank (incorporated by reference to Exhibit 10.2 to the September 1997 Form 10-Q)
10.7	Second amendment to amended and restated \$5 million business Loan agreement dated October 19, 1998 between Agree Limited Partnership and Michigan National Bank (incorporated by reference to Exhibit 10.17 to the Company's Annual Report on Form 10-K for the year ended December 31, 1998)
10.8	Employment Agreement, dated July 1, 2004, by and between the Company, and Richard Agree (incorporated by reference to exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ending June 30, 2004 (the June 2004 Form 10-Q))
10.9	Employment Agreement, dated July 1, 2004, by and between the Company, and Kenneth R. Howe (incorporated by reference to exhibit 10.2 to the June 2004 Form 10-Q)
10.10	Third amendment to amended and restated \$5 million business Loan agreement dated December 19, 1999 between Agree Limited Partnership and Michigan National Bank (incorporated by reference to exhibit 10.17 to the Company's Form 10-K for the year ended December 31, 1999)
10.11	Trust Mortgage dated as of June 27, 1999 from Agree Facility No. 1, L.L.C. as Grantor to Manufacturers and Traders Trust Company (incorporated by reference to exhibit 10.4 to the June 1999 Form 10-Q)
10.12	Employment Agreement, dated January 10, 2000, by and between the Company, and David J. Prueter (incorporated by reference to exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended March 31, 2000)
10.13	Fourth amendment to amended and restated \$5 million business Loan agreement dated February 19, 2001 between Agree Limited Partnership and Michigan National Bank (incorporated by reference to exhibit 10.23 to the Company's Annual Report on Form 10-K for the year ended December 31, 2000 (the 2000 Form 10-K))
10.14	Mortgage dated as of December 20, 2001, by Agree Limited Partnership to and in favor of Nationwide Life Insurance Company (incorporated by reference to exhibit 10.25 to the Company's Annual Report on Form 10-K for the year ended December 31, 2001 (the 2001 Form 10-K))
10.15	Fifth amendment to amended and restated \$5 million business Loan agreement dated April 30, 2002 between Agree Limited Partnership and Standard Federal Bank (incorporated by reference to exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2002 (the June 2002 Form 10-Q))
10.16	Project Loan Agreement dated as of April 30, 2002 between Royal Identify Company (together with its successors and assigns) and Lawrence Store No. 203 L.L.C. (together with its permitted successors and assigns) (incorporated by reference to exhibit 10.2 to the June 2002 Form 10-Q)
10.17	



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Project Loan Agreement dated as of November 25, 2002 between Wilmington Trust Company, not in its individual capacity, but solely as Owner Trustee, and Indianapolis Store No. 16 L.L.C. (incorporated by reference to exhibit 10.28 to the Company's Annual Report on Form 10-K for the year ended December 31, 2003 (the 2003 Form 10-K))

- 10.18 Project Loan Agreement dated as of January 30, 2003 between Modern Woodman of America and Phoenix Drive L.L.C. (incorporated by reference to exhibit 10.1 to the March 31, 2003 Form 10-Q)

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<b>Exhibit Number</b>	<b>Description</b>
10.19	Sixth amendment to amended and restated \$5 million business loan agreement dated April 30, 2003, between Agree Limited Partnership and Standard Federal Bank (incorporated by reference to exhibit 10.1 to the June 30, 2003 Form 10-Q)
10.20	Amended and Restated \$50 million Line of Credit agreement dated November 5, 2003, among Agree Realty Corporation, Standard Federal Bank and Bank One (incorporated by reference to exhibit 10.1 to the Sept. 30, 2003 Form 10-Q)
10.21	Indemnity Deed of Trust and Security Agreement dated October 31, 2003, by Agree Columbia Crossing Project, L.L.C., and Nationwide Life Insurance Company (incorporated by reference to exhibit 10.33 to the December 31, 2003 Form 10-K)
10.22	Indemnity Deed of Trust and Security Agreement dated October 31, 2003, by Agree-Milestone Center Project, L.L.C., and Nationwide Life Insurance Company (incorporated by reference to exhibit 10.34 to the December 31, 2003 Form 10-K)
10.23	Mortgage and Security Agreement dated October 31, 2003, by Oklahoma Store No. 151, L.L.C. and Nationwide Life Insurance Company (incorporated by reference to exhibit 10.35 to the December 31, 2003 Form 10-K)
10.24	Deed of Trust and Security Agreement dated October 31, 2003, by Omaha Store No. 166, L.L.C. and Nationwide Life Insurance Company (incorporated by reference to exhibit 10.36 to the December 31, 2003 Form 10-K)
10.25	The Company's 2005 Equity Incentive Plan
10.26	Employment Agreement, dated August 1, 2005, by and between the Company, and Charles Carter (incorporated by reference to exhibit 10.1 to the September 2005 Form 10-Q)
10.27	Employment Agreement, dated September 1, 2005, by and between the Company, and Vicky Umphryes (incorporated by reference to exhibit 10.2 to the September 2005 Form 10-Q)
10.28	Third Amended and Restated Line of Credit Agreement by and between the Company and LaSalle Bank Midwest National Association, Individually and as Agent for the Lenders and together with Fifth Third Bank (incorporated by reference to exhibit 10.28 to the Company's Annual Report on Form 10-K for the year ended December 31, 2006 (the 2006 Form 10-K))
10.29	Amendment No. 10 to Business Loan Agreement, Amendment No. 2 to Ninth Amended and Restated Promissory Note (\$5 million Line of Credit) (incorporated by references to exhibit 10.29 to the 2006 Form 10-K)
21.1	Subsidiaries of Agree Realty Corporation (incorporated by reference to exhibit 21 to the Company's Form 10-K for the year ended December 31, 2005)
23.1	Consent of Virchow, Krause & Company, LLP*

23.2 Consent of BDO Seidman, LLP\*

\* Filed herewith.

**Item 9. Undertakings.**

The undersigned registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

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(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;  
(ii) to reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment hereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement; provided, however, that paragraphs (i) and (ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this registration statement.

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

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

(4) That, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

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

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Pursuant to the requirements of the Securities Act, Agree Realty Corporation certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Farmington Hills, State of Michigan, on the 21st day of March, 2007.

**AGREE REALTY CORPORATION**

By: /s/ Richard Agree  
 Richard Agree  
 President and Chief Executive Officer

**POWER OF ATTORNEY**

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated. Each of the undersigned officers and directors of the registrant hereby constitutes Richard Agree and Kenneth R. Howe, either of whom may act, his true and lawful attorneys-in-fact with full power to sign for him and in his name in the capacities indicated below and to file any and all amendments to the registration statement filed herewith, making such changes in the registration statement as the registrant deems appropriate, and generally to do all such things in his name and behalf in his capacity as an officer and director to enable the registrant to comply with the provisions of the Securities Act of 1933 and all requirements of the Securities and Exchange Commission and any state or other securities authority.

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Richard Agree	President, Chief Executive Officer, Chairman of the Board, and Director (Principal Executive Officer)	March 21, 2007
Richard Agree		
/s/ Farris G. Kalil	Director	March 21, 2007
Farris G. Kalil		
/s/ Michael Rotchford	Director	March 21, 2007
Michael Rotchford		
/s/ Leon M. Schurgin	Director	March 21, 2007
Leon M. Schurgin		
/s/ Gene Silverman	Director	March 21, 2007
Gene Silvermann		
/s/ Ellis G. Wachs	Director	March 21, 2007
Ellis G. Wachs		
/s/ Kenneth R. Howe		March 21, 2007

Vice President, Finance and Secretary (Principal  
Financial/Accounting Officer)

Kenneth R. Howe

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- 10.23 Mortgage and Security Agreement dated October 31, 2003, by Oklahoma Store No. 151, L.L.C. and Nationwide Life Insurance Company (incorporated by reference to exhibit 10.35 to the December 31, 2003 Form 10-K)
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