Section 1: 10-Q (10-Q - 3Q 2018)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2018

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from _____ to _____

Commission file number: 001-13777

GETTY REALTY CORP.

(Exact Name of Registrant as Specified in Its Charter)

Maryland	**11-3412575**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**

Two Jericho Plaza, Suite 110
Jericho, New York 11753-1681
(Address of Principal Executive Offices) (Zip Code)
(516) 478-5400
(Registrant's Telephone Number, Including Area Code)
Not Applicable
(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☒

Non-accelerated filer ☐ Smaller reporting company ☐ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

The registrant had outstanding 40,533,322 shares of common stock as of October 25, 2018.

GETTY REALTY CORP.
FORM 10-Q

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PART I—FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

GETTY REALTY CORP.
CONSOLIDATED BALANCE SHEETS
(Unaudited)
(in thousands, except per share amounts)

	September 30, 2018	December 31, 2017
ASSETS		
Real estate:		
Land	$ 629,602	$ 589,497
Buildings and improvements	403,900	379,785
Construction in progress	3,333	1,682
	1,036,835	970,964
Less accumulated depreciation and amortization	(145,756)	(133,353)
Real estate held for use, net	891,079	837,611
Real estate held for sale, net	360	—
Real estate, net	891,439	837,611
Investment in direct financing leases, net	87,376	89,587
Notes and mortgages receivable	33,072	32,366
Cash and cash equivalents	18,563	19,992
Restricted cash	1,442	821
Deferred rent receivable	36,824	33,610
Accounts receivable, net of allowance of $2,114 and $1,840, respectively	2,925	3,712
Prepaid expenses and other assets	58,606	55,055
Total assets	$ 1,130,247	$ 1,072,754
LIABILITIES AND STOCKHOLDERS' EQUITY		
Liabilities:		
Borrowings under credit agreement, net	$ 97,021	$ 154,502
Senior unsecured notes, net	324,380	224,656
Environmental remediation obligations	60,905	63,565
Dividends payable	13,145	12,846
Accounts payable and accrued liabilities	62,604	63,490
Total liabilities	558,055	519,059
Commitments and contingencies	—	—
Stockholders' equity:		
Preferred stock, $0.01 par value; 20,000,000 and 10,000,000 shares authorized, respectively; unissued	—	—
Common stock, $0.01 par value; 100,000,000 and 60,000,000 shares authorized, respectively; 40,521,725 and 39,696,110 shares issued and outstanding, respectively	405	397
Additional paid-in capital	627,905	604,872
Dividends paid in excess of earnings	(56,118)	(51,574)
Total stockholders' equity	572,192	553,695
Total liabilities and stockholders' equity	$ 1,130,247	$ 1,072,754

The accompanying notes are an integral part of these consolidated financial statements.

GETTY REALTY CORP.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)
(in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Revenues:				
Revenues from rental properties	$ 29,570	$ 24,913	$ 86,877	$ 73,174
Tenant reimbursements	4,332	3,799	11,861	10,717
Interest on notes and mortgages receivable	792	752	2,314	2,259
Total revenues	34,694	29,464	101,052	86,150
Operating expenses:				
Property costs	5,592	5,307	16,955	15,368
Impairments	729	2,167	3,987	6,549
Environmental	1,208	1,045	3,898	931
General and administrative	3,556	3,395	10,998	10,562
Allowance for uncollectible accounts	357	139	364	200
Depreciation and amortization	6,068	4,678	17,569	13,465
Total operating expenses	17,510	16,731	53,771	47,075
Operating income	17,184	12,733	47,281	39,075
Gain (loss) on dispositions of real estate	(29)	163	3,636	339
Other income (expense), net	(78)	881	510	4,992
Interest expense	(6,060)	(4,319)	(16,425)	(12,678)
Earnings from continuing operations	11,017	9,458	35,002	31,728
Discontinued operations:				
Earnings (loss) from discontinued operations	(73)	(118)	(486)	2,422
Net earnings	$ 10,944	$ 9,340	$ 34,516	$ 34,150
Basic earnings per common share:				
Earnings from continuing operations	$ 0.27	$ 0.24	$ 0.86	$ 0.87
Earnings (loss) from discontinued operations	—	—	(0.01)	0.07
Net earnings	$ 0.27	$ 0.24	$ 0.85	$ 0.94
Diluted earnings per common share:				
Earnings from continuing operations	$ 0.27	$ 0.24	$ 0.86	$ 0.87
Earnings (loss) from discontinued operations	—	—	(0.01)	0.07
Net earnings	$ 0.27	$ 0.24	$ 0.85	$ 0.94
Weighted average common shares outstanding:				
Basic	40,430	38,702	40,016	35,979
Diluted	40,455	38,702	40,031	35,979
Dividends declared per common share	$ 0.32	$ 0.28	$ 0.96	$ 0.84

The accompanying notes are an integral part of these consolidated financial statements.

GETTY REALTY CORP.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)
(in thousands)

	Nine Months Ended September 30,	
	2018	**2017**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net earnings	$ 34,516	$ 34,150
Adjustments to reconcile net earnings to net cash flow provided by operating activities:		
Depreciation and amortization expense	17,569	13,465
Impairment charges	4,808	7,044
(Gain) loss on dispositions of real estate	(3,636)	(339)
Deferred rent receivable	(3,214)	(2,540)
Allowance for uncollectible accounts	364	200
Accretion expense	1,837	2,621
Amortization of above-market and below-market leases	(624)	(345)
Amortization of loan origination costs	636	578
Stock-based compensation	1,309	996
Changes in assets and liabilities:		
Accounts receivable	(392)	(67)
Prepaid expenses and other assets	(383)	(77)
Environmental remediation obligations	(7,516)	(15,752)
Accounts payable and accrued liabilities	1,213	265
Net cash flow provided by operating activities	46,487	40,199
CASH FLOWS FROM INVESTING ACTIVITIES:		
Property acquisitions	(74,714)	(143,885)
Capital expenditures	(878)	(307)
Addition to construction in progress	(2,050)	(839)
Proceeds from dispositions of real estate	1,641	2,410
Deposits for property acquisitions	(300)	1,711
Amortization of investment in direct financing leases	2,210	1,836
(Issuance) of notes and mortgages receivable	(242)	—
Collection of notes and mortgages receivable	2,855	1,498
Net cash flow (used in) investing activities	(71,478)	(137,576)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Borrowings under credit agreement	70,000	65,000
Repayments under credit agreement	(125,000)	(95,000)
Proceeds from senior unsecured notes	100,000	50,000
Payment of loan origination costs	(3,393)	(157)
Payments of cash dividends	(37,681)	(28,457)
Payments in settlement of restricted stock units	—	(1,195)
Proceeds from issuance of common stock, net - Equity offering	—	104,312
Proceeds from issuance of common stock, net - ATM	20,652	8,545
Other	(395)	(5)
Net cash flow provided by financing activities	24,183	103,043
Change in cash, cash equivalents and restricted cash	(808)	5,666
Cash, cash equivalents and restricted cash at beginning of period	20,813	13,194
Cash, cash equivalents and restricted cash at end of period	$ 20,005	$ 18,860
Supplemental disclosures of cash flow information		
Cash paid during the period for:		
Interest	$ 15,360	$ 11,834
Income taxes	224	36
Environmental remediation obligations	6,836	9,636
Non-cash transactions:		
Dividends declared but not yet paid	13,145	11,165
Issuance of notes and mortgages receivable related to property dispositions	$ 3,313	$ 432

The accompanying notes are an integral part of these consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

NOTE 1. — DESCRIPTION OF BUSINESS

Getty Realty Corp. (together with its subsidiaries, unless otherwise indicated or except where the context otherwise requires, "we," "us" or "our") is the leading publicly-traded real estate investment trust ("REIT") in the United States specializing in the ownership, leasing and financing of convenience store and gasoline station properties. As of September 30, 2018, we owned 861 properties and leased 77 properties from third-party landlords. These 938 properties are located in 30 states across the United States and Washington, D.C. Our properties are operated under a variety of nationally recognized brands including 76, BP, Citgo, Conoco, Exxon, Getty, Gulf, Mobil, Shell, Sunoco and Valero. Our company was originally founded in 1955 and is headquartered in Jericho, New York.

NOTE 2. — ACCOUNTING POLICIES

Basis of Presentation

The consolidated financial statements include the accounts of Getty Realty Corp. and its wholly-owned subsidiaries. The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). We do not distinguish our principal business or our operations on a geographical basis for purposes of measuring performance. We manage and evaluate our operations as a single segment. All significant intercompany accounts and transactions have been eliminated. Certain reclassifications have been made to prior period amounts in order to conform to current period presentation.

Unaudited, Interim Consolidated Financial Statements

The consolidated financial statements are unaudited but, in our opinion, reflect all adjustments (consisting of normal recurring accruals) necessary for a fair statement of the results for the periods presented. These statements should be read in conjunction with the consolidated financial statements and related notes in our Annual Report on Form 10-K for the year ended December 31, 2017.

Use of Estimates, Judgments and Assumptions

The consolidated financial statements have been prepared in conformity with GAAP, which requires management to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and revenues and expenses during the period reported. Estimates, judgments and assumptions underlying the accompanying consolidated financial statements include, but are not limited to, real estate, receivables, deferred rent receivable, direct financing leases, depreciation and amortization, impairment of long-lived assets, environmental remediation costs, environmental remediation obligations, litigation, accrued liabilities, income taxes and the allocation of the purchase price of properties acquired to the assets acquired and liabilities assumed. Application of these estimates and assumptions requires exercise of judgment as to future uncertainties and, as a result, actual results could differ materially from these estimates.

Real Estate

Real estate assets are stated at cost less accumulated depreciation and amortization. For acquisitions of real estate which are accounted for as business combinations, we estimate the fair value of acquired tangible assets (consisting of land, buildings and improvements) "as if vacant" and identified intangible assets and liabilities (consisting of leasehold interests, above-market and below-market leases, in-place leases and tenant relationships) and assumed debt. Based on these estimates, we allocate the estimated fair value to the applicable assets and liabilities. Fair value is determined based on an exit price approach, which contemplates the price that would be received from the sale of an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. We expense transaction costs associated with business combinations in the period incurred. Acquisitions of real estate which do not meet the definition of a business are accounted for as asset acquisitions. The accounting model for asset acquisitions is similar to the accounting model for business combinations except that the acquisition costs are capitalized and allocated to the individual assets acquired and liabilities assumed on a relative fair value basis. See Note 11 for additional information regarding property acquisitions.

We capitalize direct costs, including costs such as construction costs and professional services, and indirect costs associated with the development and construction of real estate assets while substantive activities are ongoing to prepare the assets for their intended use. The capitalization period begins when development activities are underway and ends when it is determined that the asset is substantially complete and ready for its intended use.

We evaluate the held for sale classification of our real estate as of the end of each quarter. Assets that are classified as held for sale are recorded at the lower of their carrying amount or fair value less costs to sell.

When real estate assets are sold or retired, the cost and related accumulated depreciation and amortization is eliminated from the respective accounts and any gain or loss is credited or charged to income. We evaluate real estate sale transactions where we provide seller financing to determine sale and gain recognition in accordance with GAAP. Expenditures for maintenance and repairs are charged to income when incurred.

Direct Financing Leases

Income under direct financing leases is included in revenues from rental properties and is recognized over the lease terms using the effective interest rate method which produces a constant periodic rate of return on the net investments in the leased properties. The investments in direct financing leases are increased for interest income earned and amortized over the life of the leases and reduced by the receipt of lease payments. We consider direct financing leases to be past-due or delinquent when a contractually required payment is not remitted in accordance with the provisions of the underlying agreement. We evaluate each account individually and set up an allowance when, based upon current information and events, it is probable that we will be unable to collect all amounts due according to the existing contractual terms and the amount can be reasonably estimated.

We review our direct financing leases at least annually to determine whether there has been an other-than-temporary decline in the current estimate of residual value of the property. The residual value is our estimate of what we could realize upon the sale of the property at the end of the lease term, based on market information and third-party estimates where available. If this review indicates that a decline in residual value has occurred that is other-than-temporary, we recognize an impairment charge. There were no impairments of any of our direct financing leases during the three and nine months ended September 30, 2018 and 2017.

When we enter into a contract to sell properties that are recorded as direct financing leases, we evaluate whether we believe that it is probable that the disposition will occur. If we determine that the disposition is probable and therefore the property's holding period is reduced, we record an allowance for credit losses to reflect the change in the estimate of the undiscounted future rents. Accordingly, the net investment balance is written down to fair value.

Notes and Mortgages Receivable

Notes and mortgages receivable consists of loans originated by us in conjunction with property dispositions and funding provided to tenants in conjunction with property acquisitions and capital improvements. Notes and mortgages receivable are recorded at stated principal amounts. We evaluate the collectability of both interest and principal on each loan to determine whether it is impaired. A loan is considered to be impaired when, based upon current information and events, it is probable that we will be unable to collect all amounts due under the existing contractual terms. When a loan is considered to be impaired, the amount of the loss is calculated by comparing the recorded investment to the fair value determined by discounting the expected future cash flows at the loan's effective interest rate or to the fair value of the underlying collateral, if the loan is collateralized. Interest income on performing loans is accrued as earned. Interest income on impaired loans is recognized on a cash basis. We do not provide for an additional allowance for loan losses based on the grouping of loans, as we believe that the characteristics of the loans are not sufficiently similar to allow an evaluation of these loans as a group for a possible loan loss allowance. As such, all of our loans are evaluated individually for impairment purposes. There were no impairments related to our notes and mortgages receivable during the three and nine months ended September 30, 2018 and 2017.

Revenue Recognition and Deferred Rent Receivable

On January 1, 2018, we adopted ASU 2014-09, Revenue from Contracts with Customers (Topic 606), ("Topic 606") using the modified retrospective method applying it to any open contracts as of January 1, 2018. The new guidance provides a unified model to determine how revenue is recognized. To determine the proper amount of revenue to be recognized, we perform the following steps: (i) identify the contract with the customer, (ii) identify the performance obligations within the contract, (iii) determine the transaction price, (iv) allocate the transaction price to the performance obligations and (v) recognize revenue when (or as) a performance obligation is satisfied. We concluded that our revenue consists of rental income from leasing arrangements, which is specifically excluded from the standard, and thus had no material impact on our consolidated financial statements or notes to our consolidated financial statements as of September 30, 2018.

Minimum lease payments from operating leases are recognized on a straight-line basis over the term of the leases. The cumulative difference between lease revenue recognized under this method and the contractual lease payment terms is recorded as deferred rent receivable on our consolidated balance sheets. We reserve for a portion of the recorded deferred rent receivable if circumstances indicate that a tenant will not make all of its contractual lease payments during the current lease term. We make estimates of the collectability of our accounts receivable related to revenue from rental properties. We analyze accounts receivable and historical bad debt levels, customer creditworthiness and current economic trends when evaluating the adequacy of the allowance for doubtful accounts. Additionally, with respect to tenants in bankruptcy, we estimate the expected recovery through bankruptcy claims and increase the allowance for amounts deemed uncollectible. If our assumptions regarding the collectability of accounts receivable prove incorrect, we could experience write-offs of the accounts receivable or deferred rent receivable in excess of our allowance for doubtful accounts.

The present value of the difference between the fair market rent and the contractual rent for above-market and below-market leases at the time properties are acquired is amortized into revenues from rental properties over the remaining terms of the in-place leases. Lease termination fees are recognized as other income when earned upon the termination of a tenant's lease and relinquishment of space in which we have no further obligation to the tenant.

The sales of nonfinancial assets, such as real estate, are to be recognized when control of the asset transfers to the buyer, which will occur when the buyer has the ability to direct the use of or obtain substantially all of the remaining benefits from the asset. This generally occurs when the transaction closes and consideration is exchanged for control of the property. During the nine months ended September 30, 2018, we disposed of six properties, in separate transactions, which resulted in an aggregate gain of $3,665,000, included in gain on dispositions of real estate, on our consolidated statements of operations. We also received funds from a property condemnation resulting in a loss of $29,000, included in gain on dispositions of real estate on our consolidated statements of operations.

Impairment of Long-Lived Assets

Assets are written down to fair value when events and circumstances indicate that the assets might be impaired and the projected undiscounted cash flows estimated to be generated by those assets are less than the carrying amount of those assets. Assets held for disposal are written down to fair value less estimated disposition costs.

We recorded impairment charges aggregating $832,000 and $4,808,000 for the three and nine months ended September 30, 2018, respectively, and $2,393,000 and $7,044,000 for the three and nine months ended September 30, 2017, respectively, in continuing and discontinued operations. Our estimated fair values, as they relate to property carrying values, were primarily based upon (i) estimated sales prices from third-party offers based on signed contracts, letters of intent or indicative bids, for which we do not have access to the unobservable inputs used to determine these estimated fair values, and/or consideration of the amount that currently would be required to replace the asset, as adjusted for obsolescence (this method was used to determine $2,531,000 of the $4,808,000 in impairments recognized during the nine months ended September 30, 2018) and (ii) discounted cash flow models (this method was used to determine $104,000 of the $4,808,000 in impairments recognized during the nine months ended September 30, 2018). During the nine months ended September 30, 2018, we recorded $2,173,000 of the $4,808,000 in impairments recognized due to the accumulation of asset retirement costs as a result of changes in estimates associated with our estimated environmental liabilities which increased the carrying values of certain properties in excess of their fair values.

The estimated fair value of real estate is based on the price that would be received from the sale of the property in an orderly transaction between market participants at the measurement date. In general, we consider multiple internal valuation techniques when measuring the fair value of a property, all of which are based on unobservable inputs and assumptions that are classified within Level 3 of the Fair Value Hierarchy. These unobservable inputs include assumed holding periods ranging up to 15 years, assumed average rent increases of 2.0% annually, income capitalized at a rate of 8.0% and cash flows discounted at a rate of 7.0%. These assessments have a direct impact on our net income because recording an impairment loss results in an immediate negative adjustment to net income. The evaluation of anticipated cash flows is highly subjective and is based in part on assumptions regarding future rental rates and operating expenses that could differ materially from actual results in future periods. Where properties held for use have been identified as having a potential for sale, additional judgments are required related to the determination as to the appropriate period over which the projected undiscounted cash flows should include the operating cash flows and the amount included as the estimated residual value. This requires significant judgment. In some cases, the results of whether impairment is indicated are sensitive to changes in assumptions input into the estimates, including the holding period until expected sale.

Fair Value of Financial Instruments

All of our financial instruments are reflected in the accompanying consolidated balance sheets at amounts which, in our estimation based upon an interpretation of available market information and valuation methodologies, reasonably approximate their fair values, except those separately disclosed in the notes below.

The preparation of consolidated financial statements in accordance with GAAP requires management to make estimates of fair value that affect the reported amounts of assets and liabilities and disclosure of assets and liabilities at the date of the consolidated financial statements and revenues and expenses during the period reported using a hierarchy (the "Fair Value Hierarchy") that prioritizes the inputs to valuation techniques used to measure the fair value. The Fair Value Hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The levels of the Fair Value Hierarchy are as follows: "Level 1" – inputs that reflect unadjusted quoted prices in active markets for identical assets or liabilities that we have the ability to access at the measurement date; "Level 2" – inputs other than quoted prices that are observable for the asset or liability either directly or indirectly, including inputs in markets that are not considered to be active; and "Level 3" – inputs that are unobservable. Certain types of assets and liabilities are recorded at fair value either on a recurring or non-recurring basis. Assets required or elected to be marked-to-market and reported at fair value every reporting period are valued on a recurring basis. Other assets not required to be recorded at fair value every period

may be recorded at fair value if a specific provision or other impairment is recorded within the period to mark the carrying value of the asset to market as of the reporting date. Such assets are valued on a non-recurring basis.

Environmental Remediation Obligations

We record the fair value of a liability for an environmental remediation obligation as an asset and liability when there is a legal obligation associated with the retirement of a tangible long-lived asset and the liability can be reasonably estimated. Environmental remediation obligations are estimated based on the level and impact of contamination at each property. The accrued liability is the aggregate of our estimate of the fair value of cost for each component of the liability. The accrued liability is net of estimated recoveries from state underground storage tank ("UST") remediation funds considering estimated recovery rates developed from prior experience with the funds. Net environmental liabilities are currently measured based on their expected future cash flows which have been adjusted for inflation and discounted to present value. We accrue for environmental liabilities that we believe are allocable to other potentially responsible parties if it becomes probable that the other parties will not pay their environmental remediation obligations.

Income Taxes

We and our subsidiaries file a consolidated federal income tax return. Effective January 1, 2001, we elected to qualify, and believe that we are operating so as to qualify, as a REIT for federal income tax purposes. Accordingly, we generally will not be subject to federal income tax on qualifying REIT income, provided that distributions to our stockholders equal at least the amount of our taxable income as defined under the Internal Revenue Code. We accrue for uncertain tax matters when appropriate. The accrual for uncertain tax positions is adjusted as circumstances change and as the uncertainties become more clearly defined, such as when audits are settled or exposures expire. Tax returns for the years 2015, 2016 and 2017, and tax returns which will be filed for the year ended 2018, remain open to examination by federal and state tax jurisdictions under the respective statutes of limitations.

New Accounting Pronouncements

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)* ("ASU 2016-02"). ASU 2016-02 amends the existing accounting standards for lease accounting, including requiring lessees to recognize most leases on their balance sheets. Under ASU 2016-02 lessor accounting will remain similar to lessor accounting under previous GAAP, while aligning with the FASB's new revenue recognition guidance. ASU 2016-02 is effective for fiscal years, and for interim periods within those years, beginning January 1, 2019. Early adoption of ASU 2016-02 is permitted. The standard requires a modified retrospective transition approach for all leases existing at, or entered into after, the date of initial application, with an option to use certain transition relief. In July 2018, the FASB issued ASU 2018-10, *Codification Improvements to Topic 842, Leases*, to clarify how to apply certain aspects of the new leases standard. In July 2018, the FASB also issued ASU 2018-11, *Leases (Topic 842): Targeted Improvements*, to give entities another option for transition and to provide lessors with a practical expedient to reduce the cost and complexity of implementing the new standard. The transition option allows entities to not apply the new leases standard in the comparative periods they present in their financial statements in the year of adoption. The above ASUs are effective for fiscal years, and for interim periods within those years, beginning January 1, 2019. Early adoption is permitted. We plan to adopt these standards on January 1, 2019, and are continuing to evaluate the impact of their adoption on our consolidated financial statements. However, we currently believe that the adoption of the above ASUs will not have a material impact for operating leases where we are a lessor and we will continue to record revenues from rental properties for our operating leases on a straight-line basis. However, for leases where we are a lessee we expect to record a lease liability and a right of use asset on our consolidated financial statements at fair value upon adoption. The lease liability and right-of-use asset are to be carried at the present value of remaining expected future lease payments.

On June 16, 2016, the FASB issued ASU 2016-13, *Financial Instruments – Credit Losses (Topic 326): Measurements of Credit Losses on Financial Instruments* ("ASU 2016-13") to amend the accounting for credit losses for certain financial instruments. Under the new guidance, an entity recognizes its estimate of expected credit losses as an allowance, which the FASB believes will result in more timely recognition of such losses. ASU 2016-13 is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Early adoption is permitted for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. We are currently evaluating the impact that the adoption of ASU 2016-13 will have on our consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments* ("ASU 2016-15"). ASU 2016-15 is intended to clarify the presentation of cash receipts and payments in specific situations. The amendments in this update were effective for financial statements issued for annual periods beginning after December 15, 2017, including interim periods within those annual periods. Effective January 1, 2018, we adopted ASU 2016-15. The adoption of this guidance did not have an impact on our consolidated financial statements or notes to our consolidated financial statements.

On February 22, 2017, the FASB issued ASU 2017-05, *Other Income—Gains and Losses from the Derecognition of Nonfinancial Assets (Subtopic 610-20), Clarifying the Scope of Asset Derecognition Guidance and Accounting for Partial Sales of*

Nonfinancial Assets ("ASU 2017-05") to provide guidance for recognizing gains and losses from the transfer of nonfinancial assets and in-substance non-financial assets in contracts with non-customers, unless other specific guidance applies. ASU 2017-05 requires a company to derecognize nonfinancial assets once it transfers control of a distinct nonfinancial asset or distinct in substance nonfinancial asset. As a result of the new guidance, the guidance specific to real estate sales in ASC 360-20 was eliminated. As such, sales and partial sales of real estate assets will now be subject to the same derecognition model as all other nonfinancial assets. ASU 2017-05 was effective for annual periods beginning after December 15, 2017, including interim periods within that reporting period. Effective January 1, 2018, we adopted ASU 2017-05 on a modified retrospective basis. Upon adoption, we apply the guidance to prospective disposals of nonfinancial assets within the scope of Subtopic 610-20. The adoption of this guidance did not have an impact on our consolidated financial statements or notes to our consolidated financial statements.

NOTE 3. — LEASES

As of September 30, 2018, we owned 861 properties and leased 77 properties from third-party landlords. These 938 properties are located in 30 states across the United States and Washington, D.C. Substantially all of our properties are leased on a triple-net basis primarily to petroleum distributors, convenience store retailers and, to a lesser extent, individual operators. Generally, our tenants supply fuel and either operate our properties directly or sublet our properties to operators who operate their convenience stores, gasoline stations, automotive repair service facilities or other businesses at our properties. Our triple-net lease tenants are responsible for the payment of all taxes, maintenance, repairs, insurance and other operating expenses relating to our properties, and are also responsible for environmental contamination occurring during the terms of their leases and in certain cases also for environmental contamination that existed before their leases commenced. See Note 6 for additional information regarding environmental obligations.

Substantially all of our tenants' financial results depend on the sale of refined petroleum products, convenience store sales or rental income from their subtenants. As a result, our tenants' financial results are highly dependent on the performance of the petroleum marketing industry, which is highly competitive and subject to volatility. During the terms of our leases, we monitor the credit quality of our triple-net tenants by reviewing their published credit rating, if available, reviewing publicly available financial statements, or reviewing financial or other operating statements which are delivered to us pursuant to applicable lease agreements, monitoring news reports regarding our tenants and their respective businesses, and monitoring the timeliness of lease payments and the performance of other financial covenants under their leases.

Revenues from rental properties were $29,570,000 and $86,877,000 for the three and nine months ended September 30, 2018, respectively, and $24,913,000 and $73,174,000 for the and three and nine months ended September 30, 2017, respectively. Rental income contractually due from our tenants included in revenues from rental properties was $29,083,000 and $85,009,000 for the three and nine months ended September 30, 2018, respectively, and $24,560,000 and $71,875,000 for the three and nine months ended September 30, 2017, respectively.

In accordance with GAAP, we recognize rental revenue in amounts which vary from the amount of rent contractually due during the periods presented. As a result, revenues from rental properties include non-cash adjustments recorded for deferred rental revenue due to the recognition of rental income on a straight-line basis over the current lease term, the net amortization of above-market and below-market leases, rental income recorded under direct financing leases using the effective interest method which produces a constant periodic rate of return on the net investments in the leased properties and the amortization of deferred lease incentives (the "Revenue Recognition Adjustments"). Revenue Recognition Adjustments included in revenues from rental properties were $487,000 and $1,868,000 for the three and nine months ended September 30, 2018, respectively, and $353,000 and $1,299,000 for the three and nine months ended September 30, 2017, respectively. We reserve for a portion of the recorded deferred rent receivable if circumstances indicate that a tenant will not make all of its contractual lease payments during the current lease term. Our assessments and assumptions regarding the recoverability of the deferred rent receivable are reviewed on an ongoing basis and such assessments and assumptions are subject to change. There were no deferred rent receivable reserves as of September 30, 2018 and 2017.

Tenant reimbursements, which consist of real estate taxes and other municipal charges paid by us which were reimbursable by our tenants pursuant to the terms of triple-net lease agreements, were $4,332,000 and $11,861,000 for the three and nine months ended September 30, 2018, respectively, and $3,799,000 and $10,717,000 for the three and nine months ended September 30, 2017, respectively.

We incurred $258,000 and $42,000 of lease origination costs for the nine months ended September 30, 2018 and 2017, respectively. This deferred expense is recognized on a straight-line basis as amortization expense in our consolidated statements of operations over the terms of the various leases.

The components of the $87,376,000 investment in direct financing leases as of September 30, 2018, are minimum lease payments receivable of $144,812,000 plus unguaranteed estimated residual value of $13,979,000 less unearned income of $71,415,000. The components of the $89,587,000 investment in direct financing leases as of December 31, 2017, are minimum lease payments receivable of $154,441,000 plus unguaranteed estimated residual value of $13,979,000 less unearned income of $78,833,000.

Major Tenants

As of September 30, 2018, we had three significant tenants by revenue:

- We leased 159 convenience store and gasoline station properties in three separate unitary leases and three stand-alone leases to subsidiaries of Global Partners LP (NYSE: GLP) ("Global Partners"). In the aggregate, our leases with subsidiaries of Global Partners represented 18% and 21% of our total revenues for the nine months ended September 30, 2018 and 2017, respectively. All of our unitary leases with subsidiaries of Global Partners are guaranteed by the parent company.
- We leased 77 convenience store and gasoline station properties pursuant to three separate unitary leases to Apro, LLC (d/b/a "United Oil"). In the aggregate, our leases with United Oil represented 13% and 15% of our total revenues for the nine months ended September 30, 2018 and 2017, respectively.
- We leased 76 convenience store and gasoline station properties pursuant to two separate unitary leases to subsidiaries of Chestnut Petroleum Dist., Inc. ("Chestnut Petroleum"). In the aggregate, our leases with subsidiaries of Chestnut Petroleum represented 11% and 16% of our total revenues for the nine months ended September 30, 2018 and 2017, respectively. The largest of these unitary leases, covering 57 of our properties, is guaranteed by the parent company, its principals and numerous Chestnut Petroleum affiliates.

Getty Petroleum Marketing Inc.

Getty Petroleum Marketing Inc. ("Marketing") was our largest tenant from 1997 until 2012, leasing substantially all of our properties acquired or leased prior to 1997 under a master lease. Our master lease with Marketing was terminated in April 2012 as a consequence of Marketing's bankruptcy, at which time we either sold or released these properties. As of September 30, 2018, 377 of the properties we own or lease were previously leased to Marketing, of which 332 properties are subject to long-term triple-net leases with petroleum distributors in 14 separate property portfolios and 29 properties are leased as single unit triple-net leases. The leases covering properties previously leased to Marketing are unitary triple-net lease agreements, generally with an initial term of 15 years and options for successive renewal terms of up to 20 years. Rent is scheduled to increase at varying intervals during both the initial and renewal terms of the leases. Several of the leases provide for additional rent based on the aggregate volume of fuel sold. In addition, the majority of the leases require the tenants to make capital expenditures at our properties, substantially all of which are related to the replacement of USTs that are owned by our tenants. As of September 30, 2018, we have a remaining commitment to fund up to $7,852,000 in the aggregate with our tenants for our portion of such capital expenditures. Our commitment provides us with the option to either reimburse our tenants or to offset rent when these capital expenditures are made. This deferred expense is recognized on a straight-line basis as a reduction of rental revenue in our consolidated statements of operations over the life of the various leases.

As part of the triple-net leases for properties previously leased to Marketing, we transferred title of the USTs to our tenants, and the obligation to pay for the retirement and decommissioning or removal of USTs at the end of their useful lives, or earlier if circumstances warranted, was fully or partially transferred to our new tenants. We remain contingently liable for this obligation in the event that our tenants do not satisfy their responsibilities. Accordingly, through September 30, 2018, we removed $13,813,000 of asset retirement obligations and $10,808,000 of net asset retirement costs related to USTs from our balance sheet. The cumulative change of $1,809,000 (net of accumulated amortization of $1,196,000) is recorded as deferred rental revenue and will be recognized on a straight-line basis as additional revenues from rental properties over the terms of the various leases.

NOTE 4. — COMMITMENTS AND CONTINGENCIES

Credit Risk

In order to minimize our exposure to credit risk associated with financial instruments, we place our temporary cash investments, if any, with high credit quality institutions. Temporary cash investments, if any, are currently held in an overnight bank time deposit with JPMorgan Chase Bank, N.A. and these balances, at times, may exceed federally insurable limits.

Legal Proceedings

We are subject to various legal proceedings and claims which arise in the ordinary course of our business. As of September 30, 2018 and December 31, 2017, we had accrued $12,311,000 for certain of these matters which we believe were appropriate based on information then currently available. We have recorded provisions aggregating $26,000 and credits aggregating $106,000 for environmental litigation accruals for the nine months ended September 30, 2018 and 2017, respectively, for certain of these matters. We are unable to estimate ranges in excess of the amount accrued with any certainty for these matters. It is possible that our assumptions regarding the ultimate allocation method and share of responsibility that we used to allocate environmental liabilities may change, which may result in our providing an accrual, or adjustments to the amounts recorded, for environmental litigation accruals.

Matters related to our former Newark, New Jersey Terminal and the Lower Passaic River, our MTBE litigations in the states of New Jersey, Pennsylvania and Maryland, and our lawsuit with the State of New York pertaining to a property formerly owned by us in Uniondale, New York, in particular, could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price. During the nine months ended September 30, 2018, we received $147,000 for former legal litigation settlements.

Matters related to our former Newark, New Jersey Terminal and the Lower Passaic River

In September 2003, we received a directive (the "Directive") issued by the New Jersey Department of Environmental Protection ("NJDEP") under the New Jersey Spill Compensation and Control Act. The Directive indicated that we are one of approximately 66 potentially responsible parties for alleged natural resource damages resulting from the discharges of hazardous substances along the Lower Passaic River (the "Lower Passaic River"). The Directive provides, among other things, that the named recipients must conduct an assessment of the natural resources that have been injured by discharges into the Lower Passaic River and must implement interim compensatory restoration for the injured natural resources. The NJDEP alleges that our liability arises from alleged discharges originating from our former Newark, New Jersey Terminal site (which was sold in October 2013). We responded to the Directive by asserting that we are not liable. There has been no material activity and/or communications by the NJDEP with respect to the Directive since early after its issuance.

In May 2007, the United States Environmental Protection Agency ("EPA") entered into an Administrative Settlement Agreement and Order on Consent ("AOC") with over 70 parties to perform a Remedial Investigation and Feasibility Study ("RI/FS") for a 17-mile stretch of the Lower Passaic River in New Jersey. The RI/FS is intended to address the investigation and evaluation of alternative remedial actions with respect to alleged damages to the Lower Passaic River. Most of the parties to the AOC, including us, are also members of a Cooperating Parties Group ("CPG"). The CPG agreed to an interim allocation formula for purposes of allocating the costs to complete the RI/FS among its members, with the understanding that this agreed-upon allocation formula is not binding on the parties in terms of any potential liability for the costs to remediate the Lower Passaic River. The CPG submitted to the EPA its draft RI/FS in 2015. The draft RI/FS set forth various alternatives for remediating the entire 17-mile stretch of the Lower Passaic River, and provides that cost estimate for the preferred remedial action presented therein is in the range of approximately $483,000,000 to $725,000,000. The EPA has provided comments to the draft RI/FS to the CPG, some of which require proposed additional work to finalize the RI/FS. The CPG is evaluating the EPA's comments and engaging the EPA in discussions to address the EPA's comments and to determine a schedule for the completion of the RI/FS.

In addition to the RI/FS activities, other actions relating to the investigation and/or remediation of the Lower Passaic River have proceeded as follows. First, in June 2012, certain members of the CPG entered into an Administrative Settlement Agreement and Order on Consent ("10.9 AOC") effective June 18, 2012, to perform certain remediation activities, including removal and capping of sediments at the river mile 10.9 area and certain testing. The EPA also issued a Unilateral Order to Occidental Chemical Corporation ("Occidental") directing Occidental to participate and contribute to the cost of the river mile 10.9 work. Concurrent with the CPG's work on the RI/FS, on April 11, 2014, the EPA issued a draft Focused Feasibility Study ("FFS") with proposed remedial alternatives to remediate the lower 8-miles of the 17-mile stretch of the Lower Passaic River. The FFS was subject to public comments and objections, and on March 4, 2016, the EPA issued its Record of Decision ("ROD") for the lower 8-miles selecting a remedy that involves bank-to-bank dredging and installing an engineered cap with an estimated cost of $1,380,000,000. On March 31, 2016, we and more than 100 other potentially responsible parties received from the EPA a "Notice of Potential Liability and Commencement of Negotiations for Remedial Design" ("Notice"), which informed the recipients that the EPA intends to seek an Administrative Order on Consent and Settlement Agreement with Occidental for remedial design of the remedy selected in the ROD, after which the EPA plans to begin negotiations with "major" potentially responsible parties for implementation and/or payment of the selected remedy. The Notice also stated that the EPA believes that some of the potentially responsible parties and other parties not yet identified as potentially responsible parties will be eligible for a cash out settlement with the EPA. On October 5, 2016, the EPA announced that it had entered into a settlement agreement with Occidental which requires that Occidental perform the remedial design (which is expected to take four years to complete) for the remedy selected for the lower 8-miles of the Lower Passaic River.

On June 16, 2016, Maxus Energy Corporation and Tierra Solutions, Inc., who have contractual liability to Occidental for Occidental's potential liability related to the Lower Passaic River, filed for reorganization under Chapter 11 of the U.S. Bankruptcy Code. In the Chapter 11 proceedings, YPF SA, Maxus and Tierra's corporate parent, sought bankruptcy approval of a settlement under which YPF would pay $130,000,000 to the bankruptcy estate in exchange for a release in favor of Maxus, Tierra, YPF and YPF's affiliates of Maxus and Tierra's contractual environmental liability to Occidental. We and the CPG filed proofs of claims for costs incurred by the CPG relating to the lower Passaic River.

On April 19, 2017, Maxus, Tierra and certain of its affiliates (collectively, the "Debtors"), together with the Official Committee of Unsecured Creditors, of which the CPG is a member, filed an Amended Chapter 11 Plan of Liquidation (the "Chapter 11 Plan") in the Chapter 11 proceedings, which has been confirmed by order of the bankruptcy court, having an effective date of July 14, 2017 (the "Effective Date"). The Chapter 11 Plan provides for, among other things, the creation of a Liquidating Trust to liquidate and distribute from available assets certain allowed claims pursuant to the procedures set forth therein. Under the terms of the Chapter 11 Plan, the

CPG's proof of claim, which includes past costs incurred in the performance of the RI/FS and River Mile 10.9 work, is classified as an Allowed Class 4 Claim in the approximate amount of $14,300,000. To the extent that the CPG receives any distributions from the Liquidating Trust with respect to its Allowed Class 4 Claim, we would be entitled to seek reimbursement of our pro-rata share of said distribution for past costs we incurred with respect to performance of the RI/FS and River Mile 10.9 work. The Chapter 11 Plan also provides for a Mutual Contribution Release Agreement under which claims for contribution relating to liabilities associated with the Lower Passaic River and incurred prior to the Effective Date are mutually released by and among the parties identified therein. We are one of 59 parties (the "Released Parties") that entered into the Mutual Contribution Release Agreement, pursuant to which (i) the Debtors release the Released Parties from any contribution claim they may have, (ii) Occidental releases the Released Parties for the amounts itemized in Occidental's Class 4 Claim, and (iii) the Released Parties release the Debtors and Occidental for the amounts itemized in the CPG's Class 4 Claim. The Mutual Contribution Release Agreement does not reduce or affect the CPG's right to receive distributions from the Liquidating Trust on account of the CPG's Class 4 Claim or our pro-rata share of any such distributions, nor does it affect our right to assert any future claims against Occidental for costs that we may incur related to the remediation of the Lower Passaic River after the Effective Date.

By letter dated March 30, 2017, the EPA advised the recipients of the Notice that it would be entering into cash out settlements with 20 potentially responsible parties to resolve their alleged liability for the lower 8-mile remedial action that is the subject of the ROD. The letter also stated that the EPA would begin a process for identifying other potentially responsible parties for negotiation of cash out settlements to resolve their alleged liability for the lower 8-mile remedial action that is the subject of the ROD. We were not included in the initial group of 20 parties identified by the EPA for cash out settlements. In January 2018, the EPA published a notice of its intent to enter into a final settlement agreement with 15 of the identified 20 parties to resolve their respective alleged liability for the ROD work, each for a payment to the EPA in the amount of $280,600. The EPA has also been engaged in discussions with the remaining recipients of the Notice regarding a proposed framework for an allocation process that will lead to offers of cash-out settlements to certain additional parties and a consent decree in which parties that are not offered a cash-out settlement will agree to perform the lower 8-mile remedial action, in which we are participating. The EPA-commenced allocation process is scheduled to conclude by mid-2019.

On June 30, 2018, Occidental filed a complaint in the United States District Court for the District of New Jersey seeking cost recovery and contribution under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for its alleged expenses with respect to the investigation, design, and anticipated implementation of the remedy for the lower 8-miles of the Passaic River. The complaint lists over 120 defendants, including us, many of which were also named in the NJDEP's 2003 Directive and the EPA's 2016 Notice. We do not know whether this new complaint will impact the EPA's allocation process or the ultimate outcome of the matter. We intend to defend the claims consistent with our defenses in the related proceedings.

Many uncertainties remain regarding how the EPA intends to implement the ROD. We anticipate that performance of the EPA's selected remedy will be subject to future negotiations, potential enforcement proceedings and/or possible litigation. The RI/FS, AOC, 10.9 AOC and Notice do not obligate us to fund or perform remedial action contemplated by either the ROD or RI/FS and do not resolve liability issues for remedial work or the restoration of or compensation for alleged natural resource damages to the Lower Passaic River, which are not known at this time. Our ultimate liability, if any, in the pending and possible future proceedings pertaining to the Lower Passaic River is uncertain and subject to numerous contingencies which cannot be predicted and the outcome of which are not yet known.

MTBE Litigation – State of New Jersey

We are defending against a lawsuit brought by various governmental agencies of the State of New Jersey, including the NJDEP, alleging various theories of liability due to contamination of groundwater with methyl tertiary butyl ether (a fuel derived from methanol, commonly referred to as "MTBE") involving multiple locations throughout the State of New Jersey (the "New Jersey MDL Proceedings"). The complaint names as defendants approximately 50 petroleum refiners, manufacturers, distributors and retailers of MTBE or gasoline containing MTBE. The State of New Jersey is seeking reimbursement of significant clean-up and remediation costs arising out of the alleged release of MTBE containing gasoline in the State of New Jersey and is asserting various natural resource damage claims as well as liability against the owners and operators of gasoline station properties from which the releases occurred. The majority of the named defendants have already settled their cases with the State of New Jersey. A portion of the case ("bellwether" trials) has been transferred to the United States District Court for the District of New Jersey for pre-trial proceedings and trial, although a trial date has not yet been set. We continue to engage in settlement negotiations and a dialogue with the plaintiffs' counsel to educate them on the unique role of the Company and our business as compared to other defendants in the litigation. Although the ultimate outcome of the New Jersey MDL Proceedings cannot be ascertained at this time, we believe that it is probable that this litigation will be resolved in a manner that is unfavorable to us. We are unable to estimate the range of loss in excess of the amount accrued with certainty for the New Jersey MDL Proceedings as we do not believe that plaintiffs' settlement proposal is realistic and there remains uncertainty as to the allegations in this case as they relate to us, our defenses to the claims, our rights to indemnification or contribution from other parties and the aggregate possible amount of damages for which we may be held liable. It is possible that losses related to the New Jersey MDL Proceedings in excess of the amounts accrued as of September 30, 2018, could

cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

MTBE Litigation – State of Pennsylvania

On July 7, 2014, our subsidiary, Getty Properties Corp., was served with a complaint filed by the Commonwealth of Pennsylvania (the "State") in the Court of Common Pleas, Philadelphia County relating to alleged statewide MTBE contamination in Pennsylvania. The complaint names us and more than 50 other defendants, including petroleum refiners, manufacturers, distributors and retailers of MTBE or gasoline containing MTBE. The complaint seeks compensation for natural resource damages and for injuries sustained as a result of "defendants' unfair and deceptive trade practices and acts in the marketing of MTBE and gasoline containing MTBE." The plaintiffs also seek to recover costs paid or incurred by the State to detect, treat and remediate MTBE from public and private water wells and groundwater. The plaintiffs assert causes of action against all defendants based on multiple theories, including strict liability – defective design; strict liability – failure to warn; public nuisance; negligence; trespass; and violation of consumer protection law.

The case was filed in the Court of Common Pleas, Philadelphia County, but was removed by defendants to the United States District Court for the Eastern District of Pennsylvania and then transferred to the United States District Court for the Southern District of New York so that it may be managed as part of the ongoing MTBE MDL proceedings. Plaintiffs have recently filed a second amended complaint naming additional defendants and adding factual allegations intended to bolster their claims against the defendants. We have joined with other defendants in the filing of a motion to dismiss the claims against us. This motion is pending with the Court. We intend to defend vigorously the claims made against us. Our ultimate liability, if any, in this proceeding is uncertain and subject to numerous contingencies which cannot be predicted and the outcome of which are not yet known.

MTBE Litigation – State of Maryland

On December 17, 2017, the State of Maryland, by and through the Attorney General on behalf of the Maryland Department of Environment and the Maryland Department of Health (the "State of Maryland"), filed a complaint in the Circuit Court for Baltimore City related to alleged statewide MTBE contamination in Maryland. The complaint was served upon us on January 19, 2018. The complaint names us and more than 60 other defendants, including petroleum refiners, manufacturers, distributors and retailers of MTBE or gasoline containing MTBE. The complaint seeks compensation for natural resource damages and for injuries sustained as a result of the defendants' unfair and deceptive trade practices in the marketing of MTBE and gasoline containing MTBE. The plaintiffs also seek to recover costs paid or incurred by the State of Maryland to detect, investigate, treat and remediate MTBE from public and private water wells and groundwater, punitive damages and the award of attorneys' fees and litigation costs. The plaintiffs assert causes of action against all defendants based on multiple theories, including strict liability – defective design; strict liability – failure to warn; strict liability for abnormally dangerous activity; public nuisance; negligence; trespass; and violations of Titles 4, 7 and 9 of the Maryland Environmental Code.

On February 14, 2018, defendants removed the case to the United States District Court for the District of Maryland. It is unclear whether the matter will ultimately be removed to the MTBE MDL proceedings or remain in federal court in Maryland. We intend to defend vigorously the claims made against us. Our ultimate liability, if any, in this proceeding is uncertain and subject to numerous contingencies which cannot be predicted and the outcome of which are not yet known.

Uniondale, New York Litigation

In September 2004, the State of New York commenced an action against us, United Gas Corp., Costa Gas Station, Inc., Vincent Costa, The Ingraham Bedell Corporation, Richard Berger and Exxon Mobil Corporation in New York Supreme Court in Albany County seeking recovery for reimbursement of investigation and remediation costs claimed to have been incurred by the New York Environmental Protection and Spill Compensation Fund relating to contamination it alleges emanated from various gasoline station properties located in the same vicinity in Uniondale, N.Y., including a site formerly owned by us and at which a petroleum release and cleanup occurred. The complaint also seeks future costs for remediation, as well as interest and penalties. We have served an answer to the complaint denying responsibility. In 2007, the State of New York commenced action against Shell Oil Company, Shell Oil Products Company, Motiva Enterprises, LLC, and related parties, in the New York Supreme Court, Albany County seeking basically the same relief sought in the action involving us. We have also filed a third-party complaint against Hess Corporation and certain individual defendants based on alleged contribution to the contamination that is the subject of the State's claims arising from a petroleum discharge at a gasoline station up-gradient from the site formerly owned by us. In 2016, the various actions filed by the State of New York and our third-party actions were consolidated for discovery proceedings and trial. Discovery in this case is in later stages and, as it nears completion, a schedule for trial will be established. We are unable to estimate the range of loss in excess of the amount we have accrued for this lawsuit. It is possible that losses related to this case, in excess of the amounts accrued, as of September 30, 2018, could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

NOTE 5. — DEBT

The amounts outstanding under our Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement (as defined below) are as follows (in thousands):

	Maturity Date	Interest Rate	September 30, 2018	December 31, 2017
Unsecured Revolving Credit Facility	March 2022	3.63%	$ 50,000	$ 105,000
Unsecured Term Loan	March 2023	3.69%	50,000	50,000
Series A Notes	February 2021	6.00%	100,000	100,000
Series B Notes	June 2023	5.35%	75,000	75,000
Series C Notes	February 2025	4.75%	50,000	50,000
Series D Notes	June 2028	5.47%	50,000	—
Series E Notes	June 2028	5.47%	50,000	—
Total debt			425,000	380,000
Unamortized debt issuance costs, net			(3,599)	(842)
Total debt, net			$ 421,401	$ 379,158

Credit Agreement

On June 2, 2015, we entered into a $225,000,000 senior unsecured credit agreement (the "Credit Agreement") with a group of banks led by Bank of America, N.A. (the "Bank Syndicate"). The Credit Agreement consisted of a $175,000,000 unsecured revolving credit facility (the "Revolving Facility") and a $50,000,000 unsecured term loan (the "Term Loan").

On March 23, 2018, we entered in to an amended and restated credit agreement (as amended, as described below, the "Restated Credit Agreement") amending and restating our Credit Agreement. Pursuant to the Restated Credit Agreement, we (a) increased the borrowing capacity under the Revolving Facility from $175,000,000 to $250,000,000, (b) extended the maturity date of the Revolving Facility from June 2018 to March 2022, (c) extended the maturity date of the Term Loan from June 2020 to March 2023 and (d) amended certain financial covenants and provisions.

Subject to the terms of the Restated Credit Agreement and our continued compliance with its provisions, we have the option to (a) extend the term of the Revolving Facility for one additional year to March 2023 and (b) request that the lenders approve an increase of up to $300,000,000 in the amount of the Revolving Facility and/or the Term Loan to $600,000,000 in the aggregate.

The Restated Credit Agreement incurs interest and fees at various rates based on our total indebtedness to total asset value ratio at the end of each quarterly reporting period. The Revolving Facility permits borrowings at an interest rate equal to the sum of a base rate plus a margin of 0.50% to 1.30% or a LIBOR rate plus a margin of 1.50% to 2.30%. The annual commitment fee on the undrawn funds under the Revolving Facility is 0.15% to 0.25%. The Term Loan bears interest at a rate equal to the sum of a base rate plus a margin of 0.45% to 1.25% or a LIBOR rate plus a margin of 1.45% to 2.25%. The Term Loan does not provide for scheduled reductions in the principal balance prior to its maturity.

On September 19, 2018, we entered into an amendment (the "Amendment") of our Restated Credit Agreement. The Amendment modifies the Restated Credit Agreement to, among other things: (i) reflect our previously announced entrance on June 21, 2018, into (a) an amended and restated note purchase and guarantee agreement with The Prudential Insurance Company of America ("Prudential") and certain of its affiliates and (b) a note purchase and guarantee agreement with the Metropolitan Life Insurance Company ("MetLife") and certain of its affiliates; and (ii) permit borrowings under each of the Revolving Facility and the Term Loan at three different interest rates, including a rate based on the LIBOR Daily Floating Rate (as defined in the Amendment) plus the Applicable Rate (as defined in the Amendment) for such facility.

Senior Unsecured Notes

On June 21, 2018, we entered into a third amended and restated note purchase and guarantee agreement (the "Third Restated Prudential Note Purchase Agreement") amending and restating our existing senior note purchase agreement with Prudential and certain of its affiliates. Pursuant to the Third Restated Prudential Note Purchase Agreement, we agreed that our (a) 6.0% Series A Guaranteed Senior Notes due February 25, 2021, in the original aggregate principal amount of $100,000,000 (the "Series A Notes"), (b) 5.35% Series B Guaranteed Senior Notes due June 2, 2023, in the original aggregate principal amount of $75,000,000 (the "Series B Notes") and (c) 4.75% Series C Guaranteed Senior Notes due February 25, 2025, in the aggregate principal amount of $50,000,000 (the "Series C Notes") that were outstanding under the existing senior note purchase agreement would continue to remain outstanding under the Third Restated Prudential Note Purchase Agreement and we authorized and issued our 5.47% Series D Guaranteed Senior Notes due June 21, 2028, in the aggregate principal amount of $50,000,000 (the "Series D Notes" and, together with the Series A Notes, Series B Notes and Series C Notes, the "Notes"). The Third Restated Prudential Note Purchase Agreement does not provide for scheduled reductions in the principal balance of the Notes prior to their respective maturities.

On June 21, 2018, we entered into a note purchase and guarantee agreement (the "MetLife Note Purchase Agreement") with MetLife and certain of its affiliates. Pursuant to the MetLife Note Purchase Agreement, we authorized and issued our 5.47% Series E Guaranteed Senior Notes due June 21, 2028, in the aggregate principal amount of $50,000,000 (the "Series E Notes"). The MetLife Note Purchase Agreement does not provide for scheduled reductions in the principal balance of the Series E Notes prior to its maturity.

Covenants

The Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement contain customary financial covenants such as leverage, coverage ratios and minimum tangible net worth, as well as limitations on restricted payments, which may limit our ability to incur additional debt or pay dividends. The Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement also contain customary events of default, including cross defaults to each other, change of control and failure to maintain REIT status (provided that the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement require a mandatory offer to prepay the notes upon a change in control in lieu of a change of control event of default). Any event of default, if not cured or waived in a timely manner, would increase by 200 basis points (2.00%) the interest rate we pay under the Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement and could result in the acceleration of our indebtedness under the Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement. We may be prohibited from drawing funds under the Revolving Facility if there is any event or condition that constitutes an event of default under the Restated Credit Agreement or that, with the giving of any notice, the passage of time, or both, would be an event of default under the Restated Credit Agreement.

As of September 30, 2018, we are in compliance with all of the material terms of the Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement, including the various financial covenants described herein.

Debt Maturities

As of September 30, 2018, scheduled debt maturities, including balloon payments, are as follows (in thousands):

	Revolving Facility	Term Loan	Senior Unsecured Notes	Total
2018	$ —	$ —	$ —	$ —
2019	—	—	—	—
2020	—	—	—	—
2021	—	—	100,000	100,000
2022 (1)	50,000	—	—	50,000
Thereafter	—	50,000	225,000	275,000
Total	$ 50,000	$ 50,000	$ 325,000	$ 425,000

(1) The Revolving Facility matures in March 2022. Subject to the terms of the Restated Credit Agreement and our continued compliance with its provisions, we have the option to extend the term of the Revolving Facility for one additional year to March 2023.

NOTE 6. — ENVIRONMENTAL OBLIGATIONS

We are subject to numerous federal, state and local laws and regulations, including matters relating to the protection of the environment such as the remediation of known contamination and the retirement and decommissioning or removal of long-lived assets including buildings containing hazardous materials, USTs and other equipment. Environmental costs are principally attributable to remediation costs which are incurred for, among other things, removing USTs, excavation of contaminated soil and water, installing, operating, maintaining and decommissioning remediation systems, monitoring contamination and governmental agency compliance reporting required in connection with contaminated properties. We seek reimbursement from state UST remediation funds related to these environmental costs where available. The estimated future costs for known environmental remediation requirements are accrued when it is probable that a liability has been incurred and a reasonable estimate of fair value can be made. The accrued liability is the aggregate of our estimate of the fair value of cost for each component of the liability, net of estimated recoveries from state UST remediation funds considering estimated recovery rates developed from prior experience with the funds.

In July 2012, we purchased a 10-year pollution legal liability insurance policy covering substantially all of our properties at that time for preexisting unknown environmental liabilities and new environmental events. The policy has a $50,000,000 aggregate limit and is subject to various self-insured retentions and other conditions and limitations. Our intention in purchasing this policy was to obtain protection predominantly for significant events. No assurances can be given that we will obtain a net financial benefit from this investment. In addition to the environmental insurance policy purchased by the Company, we also took assignment of certain

environmental insurance policies, and rights to reimbursement for claims made thereunder, from Marketing, by order of the U.S. Bankruptcy Court during Marketing's bankruptcy proceedings. Under these assigned polices, we have received and expect to continue to receive reimbursement of certain remediation expenses for covered claims.

We enter into leases and various other agreements which contractually allocate responsibility between the parties for known and unknown environmental liabilities at or relating to the subject properties. We are contingently liable for these environmental obligations in the event that our tenant or other counterparty does not satisfy them. It is possible that our assumptions regarding the ultimate allocation method and share of responsibility that we used to allocate environmental liabilities may change, which may result in material adjustments to the amounts recorded for environmental litigation accruals and environmental remediation liabilities. We are required to accrue for environmental liabilities that we believe are allocable to others under our leases and other agreements if we determine that it is probable that our tenant or other counterparty will not meet its environmental obligations. We may ultimately be responsible to pay for environmental liabilities as the property owner if our tenant or other counterparty fails to pay them. We assess whether to accrue for environmental liabilities based upon relevant factors including our tenants' histories of paying for such obligations, our assessment of their financial capability, and their intent to pay for such obligations. However, there can be no assurance that our assessments are correct or that our tenants who have paid their obligations in the past will continue to do so. The ultimate resolution of these matters could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

For substantially all of our triple-net leases, our tenants are contractually responsible for compliance with environmental laws and regulations, removal of USTs at the end of their lease term (the cost of which in certain cases is partially borne by us) and remediation of any environmental contamination that arises during the term of their tenancy. Under the terms of our leases covering properties previously leased to Marketing (substantially all of which commenced in 2012), we have agreed to be responsible for environmental contamination at the premises that was known at the time the lease commenced, and for environmental contamination discovered (other than as a result of a voluntary site investigation) during the first 10 years of the lease term (or a shorter period for a minority of such leases). After expiration of such 10-year (or, in certain cases, shorter) period, responsibility for all newly discovered contamination, even if it relates to periods prior to commencement of the lease, is contractually allocated to our tenant. Our tenants at properties previously leased to Marketing are in all cases responsible for the cost of any remediation of contamination that results from their use and occupancy of our properties. Under substantially all of our other triple-net leases, responsibility for remediation of all environmental contamination discovered during the term of the lease (including known and unknown contamination that existed prior to commencement of the lease) is the responsibility of our tenant.

We anticipate that a majority of the USTs at properties previously leased to Marketing will be replaced over the next several years because these USTs are either at or near the end of their useful lives. For long-term, triple-net leases covering sites previously leased to Marketing, our tenants are responsible for the cost of removal and replacement of USTs and for remediation of contamination found during such UST removal and replacement, unless such contamination was found during the first 10 years of the lease term and also existed prior to commencement of the lease. In those cases, we are responsible for costs associated with the remediation of such contamination. We have also agreed to be responsible for environmental contamination that existed prior to the sale of certain properties assuming the contamination is discovered (other than as a result of a voluntary site investigation) during the first five years after the sale of the properties. For properties that are vacant, we are responsible for costs associated with UST removals and for the cost of remediation of contamination found during the removal of USTs.

In the course of certain UST removals and replacements at properties previously leased to Marketing where we retained continuing responsibility for preexisting environmental obligations, previously unknown environmental contamination was and continues to be discovered. As a result, we have developed a reasonable estimate of fair value for the prospective future environmental liability resulting from preexisting unknown environmental contamination and have accrued for these estimated costs. These estimates are based primarily upon quantifiable trends which we believe allow us to make reasonable estimates of fair value for the future costs of environmental remediation resulting from the removal and replacement of USTs. Our accrual of the additional liability represents our estimate of the fair value of cost for each component of the liability, net of estimated recoveries from state UST remediation funds considering estimated recovery rates developed from prior experience with the funds. In arriving at our accrual, we analyzed the ages of USTs at properties where we would be responsible for preexisting contamination found within 10 years after commencement of a lease (for properties subject to long-term triple-net leases) or five years from a sale (for divested properties), and projected a cost to closure for new environmental contamination.

We measure our environmental remediation liabilities at fair value based on expected future net cash flows, adjusted for inflation (using a range of 2.0% to 2.75%), and then discount them to present value (using a range of 4.0% to 7.0%). We adjust our environmental remediation liabilities quarterly to reflect changes in projected expenditures, changes in present value due to the passage of time and reductions in estimated liabilities as a result of actual expenditures incurred during each quarter. As of September 30, 2018, we had accrued a total of $60,905,000 for our prospective environmental remediation obligations. This accrual consisted of (a) $15,839,000, which was our estimate of reasonably estimable environmental remediation liability, including obligations to remove USTs for which we are responsible, net of estimated recoveries and (b) $45,066,000 for future environmental liabilities related to preexisting unknown contamination. As of December 31, 2017, we had accrued a total of $63,565,000 for our

prospective environmental remediation obligations. This accrual consisted of (a) $18,537,000, which was our estimate of reasonably estimable environmental remediation liability, including obligations to remove USTs for which we are responsible, net of estimated recoveries and (b) $45,028,000 for future environmental liabilities related to preexisting unknown contamination.

Environmental liabilities are accreted for the change in present value due to the passage of time and, accordingly, $1,837,000 and $2,621,000 of net accretion expense was recorded for the nine months ended September 30, 2018 and 2017, respectively, which is included in environmental expenses. In addition, during the nine months ended September 30, 2018 and 2017, we recorded credits to environmental expenses, included in continuing and discontinued operations, aggregating $679,000 and $6,116,000, respectively, where decreases in estimated remediation costs exceeded the depreciated carrying value of previously capitalized asset retirement costs. Environmental expenses also include project management fees, legal fees and environmental litigation accruals.

During the nine months ended September 30, 2018 and 2017, we increased the carrying values of certain of our properties by $3,027,000 and $3,560,000, respectively, due to changes in estimated environmental remediation costs. The recognition and subsequent changes in estimates in environmental liabilities and the increase or decrease in carrying values of the properties are non-cash transactions which do not appear on the face of the consolidated statements of cash flows.

Capitalized asset retirement costs are being depreciated over the estimated remaining life of the UST, a 10-year period if the increase in carrying value is related to environmental remediation obligations or such shorter period if circumstances warrant, such as the remaining lease term for properties we lease from others. Depreciation and amortization expense related to capitalized asset retirement costs in our consolidated statements of operations for the nine months ended September 30, 2018 and 2017, was $3,206,000 and $3,281,000, respectively. Capitalized asset retirement costs were $45,099,000 (consisting of $19,494,000 of known environmental liabilities and $25,605,000 of reserves for future environmental liabilities) as of September 30, 2018, and $45,380,000 (consisting of $18,692,000 of known environmental liabilities and $26,688,000 of reserves for future environmental liabilities) as of December 31, 2017. We recorded impairment charges aggregating $2,503,000 and $4,986,000 for the nine months ended September 30, 2018 and 2017, respectively, in continuing and discontinued operations for capitalized asset retirement costs.

Environmental exposures are difficult to assess and estimate for numerous reasons, including the extent of contamination, alternative treatment methods that may be applied, location of the property which subjects it to differing local laws and regulations and their interpretations, as well as the time it takes to remediate contamination and receive regulatory approval. In developing our liability for estimated environmental remediation obligations on a property by property basis, we consider, among other things, enacted laws and regulations, assessments of contamination and surrounding geology, quality of information available, currently available technologies for treatment, alternative methods of remediation and prior experience. Environmental accruals are based on estimates which are subject to significant change, and are adjusted as the remediation treatment progresses, as circumstances change, and as environmental contingencies become more clearly defined and reasonably estimable.

Our estimates are based upon facts that are known to us at this time and an assessment of the possible ultimate remedial action outcomes. It is possible that our assumptions, which form the basis of our estimates, regarding our ultimate environmental liabilities may change, which may result in our providing an accrual, or adjustments to the amounts recorded, for environmental remediation liabilities. Among the many uncertainties that impact the estimates are our assumptions, the necessary regulatory approvals for, and potential modifications of remediation plans, the amount of data available upon initial assessment of contamination, changes in costs associated with environmental remediation services and equipment, the availability of state UST remediation funds and the possibility of existing legal claims giving rise to additional claims, and possible changes in the environmental rules and regulations, enforcement policies, and reimbursement programs of various states.

In light of the uncertainties associated with environmental expenditure contingencies, we are unable to estimate ranges in excess of the amount accrued with any certainty; however, we believe that it is possible that the fair value of future actual net expenditures could be substantially higher than amounts currently recorded by us. Adjustments to accrued liabilities for environmental remediation obligations will be reflected in our consolidated financial statements as they become probable and a reasonable estimate of fair value can be made. Additional environmental liabilities could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

NOTE 7. — STOCKHOLDERS' EQUITY

A summary of the changes in stockholders' equity for the nine months ended September 30, 2018, is as follows (in thousands except per share amounts):

	Common Stock		Additional Paid-in	Dividends Paid In Excess	
	Shares	Amount	Capital	Of Earnings	Total
BALANCE, DECEMBER 31, 2017	39,696	$ 397	$ 604,872	$ (51,574)	$ 553,695
Net earnings				34,516	34,516
Dividends declared — $0.96 per share				(39,060)	(39,060)
Shares issued pursuant to ATM Program, net	785	8	20,644	—	20,652
Shares issued pursuant to dividend reinvestment	41	—	1,080	—	1,080
Stock-based compensation	—	—	1,309	—	1,309
BALANCE, SEPTEMBER 30, 2018	40,522	$ 405	$ 627,905	$ (56,118)	$ 572,192

On March 1, 2018, our Board of Directors granted 121,650 restricted stock units ("RSU" or "RSUs") under our Amended and Restated 2004 Omnibus Incentive Compensation Plan.

On October 24, 2017, our Board of Directors approved Articles Supplementary to our Articles of Incorporation, as amended, to reclassify 10,000,000 authorized shares of preferred stock, par value $.01 per share, into the same number of authorized but unissued shares of common stock, par value $.01 per share, subject to further classification or reclassification and issuance by our Board of Directors. The Articles Supplementary were filed with the Maryland State Department of Assessments and Taxation on October 25, 2017, and became effective on that date.

On May 8, 2018, our stockholders approved an amendment to our Articles of Incorporation to increase the aggregate number of shares of stock of all classes which we have the authority to issue from 70,000,000 shares to 120,000,000 shares, by increasing (i) the aggregate number of shares of common stock which we have the authority to issue from 60,000,000 to 100,000,000 shares, and (ii) the aggregate number of shares of preferred stock which we have the authority to issue from 10,000,000 to 20,000,000 shares.

Equity Offering

On July 10, 2017, we entered into an underwriting agreement (the "Underwriting Agreement") with Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC and KeyBanc Capital Markets Inc., as representatives of the several underwriters (the "Underwriters"), pursuant to which we sold to the Underwriters 4,100,000 shares of common stock (the "Equity Offering"). Pursuant to the terms of the Underwriting Agreement, we granted the Underwriters a 30-day option to purchase up to an additional 615,000 shares of common stock. We received net proceeds from the Equity Offering, including the full exercise by the Underwriters of their option to purchase additional shares, of $104,312,000 after deducting the underwriting discount and offering expenses. The net proceeds of the Equity Offering were used to repay of amounts outstanding under our Revolving Facility and subsequently were used to fund the Empire and Applegreen transactions.

ATM Program

In June 2016, we established an at-the-market equity offering program (the "2016 ATM Program"), pursuant to which we were able to issue and sell shares of our common stock with an aggregate sales price of up to $125,000,000 through a consortium of banks acting as agents. The 2016 ATM Program was terminated in January 2018.

In March 2018, we established a new at-the-market equity offering program (the "ATM Program"), pursuant to which we are able to issue and sell shares of our common stock with an aggregate sales price of up to $125,000,000 through a consortium of banks acting as agents. Sales of the shares of common stock may be made, as needed, from time to time in at-the-market offerings as defined in Rule 415 of the Securities Act, including by means of ordinary brokers' transactions on the New York Stock Exchange or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or as otherwise agreed to with the applicable agent.

During the three and nine months ended September 30, 2018, we issued a total of 248,000 and 785,000 shares of common stock, respectively, and received net proceeds of $6,938,000 and $20,652,000, respectively, under the ATM Program. During the three and nine months ended September 30, 2017, we issued 97,000 and 329,000 shares, respectively, of common stock and received net proceeds of $2,685,000 and $8,545,000, respectively, under the 2016 ATM Program. Future sales, if any, will depend on a variety of factors to be determined by us from time to time, including among others, market conditions, the trading price of our common stock, determinations by us of the appropriate sources of funding for us and potential uses of funding available to us.

Dividends

For the nine months ended September 30, 2018, we paid regular quarterly dividends of $38,761,000 or $0.96 per share. For the nine months ended September 30, 2017, we paid regular quarterly dividends of $29,404,000 or $0.84 per share.

Dividend Reinvestment Plan

Our dividend reinvestment plan provides our common stockholders with a convenient and economical method of acquiring additional shares of common stock by reinvesting all or a portion of their dividend distributions. During the nine months ended September 30, 2018, we issued 40,323 shares of common stock under the dividend reinvestment plan and received proceeds of $1,080,000. During the nine months ended September 30, 2017, we issued 36,865 shares of common stock under the dividend reinvestment plan and received proceeds of $947,000.

Stock-Based Compensation

Compensation cost for our stock-based compensation plans using the fair value method was $1,309,000 and $996,000 for the nine months ended September 30, 2018 and 2017, respectively, and is included in general and administrative expense in our consolidated statements of operations.

NOTE 8. — EARNINGS PER COMMON SHARE

Basic and diluted earnings per common share gives effect, utilizing the two-class method, to the potential dilution from the issuance of shares of our common stock in settlement of RSUs which provide for non-forfeitable dividend equivalents equal to the dividends declared per common share. Basic and diluted earnings per common share is computed by dividing net earnings less dividend equivalents attributable to RSUs by the weighted average number of common shares outstanding during the period.

Diluted earnings per common share, also gives effect to the potential dilution from the exercise of stock options utilizing the treasury stock method. There were no options outstanding as of September 30, 2018 and 2017.

The following table is a reconciliation of the numerator and denominator used in the computation of basic and diluted earnings per common share using the two-class method (in thousands except per share data):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Earnings from continuing operations	$ 11,017	$ 9,458	$ 35,002	$ 31,728
Less earnings attributable to RSUs outstanding	(183)	(126)	(548)	(391)
Earnings from continuing operations	10,834	9,332	34,454	31,337
Earnings (loss) from discontinued operations	(73)	(118)	(486)	2,422
Less earnings attributable to RSUs outstanding	—	—	—	(30)
Earnings (loss) from discontinued operations	(73)	(118)	(486)	2,392
Net earnings attributable to common stockholders used in basic and diluted earnings per share calculation	$ 10,761	$ 9,214	$ 33,968	$ 33,729
Weighted average common shares outstanding:				
Basic	40,430	38,702	40,016	35,979
Incremental shares from stock-based compensation	25	—	15	—
Diluted	40,455	38,702	40,031	35,979
Basic earnings per common share	$ 0.27	$ 0.24	$ 0.85	$ 0.94
Diluted earnings per common share	$ 0.27	$ 0.24	$ 0.85	$ 0.94

NOTE 9. — FAIR VALUE MEASUREMENTS

Debt Instruments

As of September 30, 2018 and December 31, 2017, the carrying value of the borrowings under the Restated Credit Agreement approximated fair value. As of September 30, 2018 and December 31, 2017, the fair value of the borrowings under senior unsecured notes was $328,200,000 and $233,500,000, respectively. The fair value of the borrowings outstanding as of September 30, 2018 and December 31, 2017, was determined using a discounted cash flow technique that incorporates a market interest yield curve with adjustments for duration, risk profile and borrowings outstanding, which are based on unobservable inputs within Level 3 of the Fair Value Hierarchy.

Supplemental Retirement Plan

We have mutual fund assets that are measured at fair value on a recurring basis using Level 1 inputs. We have a Supplemental Retirement Plan for executives. The amounts held in trust under the Supplemental Retirement Plan using Level 2 inputs may be used to satisfy claims of general creditors in the event of our or any of our subsidiaries' bankruptcy. We have liability to the executives participating in the Supplemental Retirement Plan for the participant account balances equal to the aggregate of the amount invested at the executives' direction and the income earned in such mutual funds.

The following summarizes as of September 30, 2018, our assets and liabilities measured at fair value on a recurring basis by level within the Fair Value Hierarchy (in thousands):

	Level 1	Level 2	Level 3	Total
Assets:				
Mutual funds	$ 568	$ —	$ —	$ 568
Liabilities:				
Deferred compensation	$ —	$ 568	$ —	$ 568

The following summarizes as of December 31, 2017, our assets and liabilities measured at fair value on a recurring basis by level within the Fair Value Hierarchy:

	Level 1	Level 2	Level 3	Total
Assets:				
Mutual funds	$ 451	$ —	$ —	$ 451
Liabilities:				
Deferred compensation	$ —	$ 451	$ —	$ 451

Real Estate Assets

We have certain real estate assets that are measured at fair value on a non-recurring basis using Level 3 inputs as of September 30, 2018 and December 31, 2017, of $2,908,000 and $2,785,000, respectively, where impairment charges have been recorded. Due to the subjectivity inherent in the internal valuation techniques used in estimating fair value, the amounts realized from the sale of such assets may vary significantly from these estimates.

NOTE 10. — DISCONTINUED OPERATIONS AND ASSETS HELD FOR SALE

We report as discontinued operations properties which met the criteria to be accounted for as held for sale in accordance with GAAP as of June 30, 2014, and certain properties disposed of during the periods presented that were previously classified as held for sale as of June 30, 2014. All results of these discontinued operations are included in a separate component of income on the consolidated statements of operations under the caption discontinued operations. At September 30, 2018, we classified two properties as held for sale on our consolidated balance sheet. We determined that the expected sale of these properties does not represent a strategic shift in our operations and, as a result, the results of operations for the two properties were reflected in our earnings from continuing operations for the nine months ended September 30, 2018.

Real estate held for sale consisted of the following at September 30, 2018 and December 31, 2017 (in thousands):

	September 30, 2018	December 31, 2017
Land	$ 167	$ —
Buildings and improvements	209	—
	376	—
Accumulated depreciation and amortization	(16)	—
Real estate held for sale, net	$ 360	$ —

Activity from discontinued operations was as follows (in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Revenues from rental properties	$ —	$ —	$ —	$ —
Impairments	(103)	(226)	(821)	(495)
Changes in environmental estimates	30	105	335	2,906
Other operating income	—	3	—	11
Earnings (loss) from discontinued operations	$ (73)	$ (118)	$ (486)	$ 2,422

NOTE 11. — PROPERTY ACQUISITIONS

2018

During the nine months ended September 30, 2018, we acquired fee simple interests in 39 convenience store and gasoline station properties for an aggregate purchase price of $74,714,000.

On April 17, 2018, we acquired fee simple interests in 30 convenience store and gasoline station properties for $52,592,000 and entered into a unitary lease with GPM Investments, LLC ("GPM") at the closing of the transaction. We funded the GPM transaction through funds available under our Revolving Facility. The unitary lease provides for an initial term of 15 years, with four five-year renewal options. The unitary lease requires GPM to pay a fixed annual rent plus all amounts pertaining to the properties, including environmental expenses, real estate taxes, assessments, license and permit fees, charges for public utilities and all other governmental charges. Rent is scheduled to increase annually during the initial and renewal terms of the lease. The properties are located primarily within metropolitan markets in the states of Arkansas, Louisiana, Oklahoma and Texas. We accounted for the acquisition of the properties as an asset acquisition. We estimated the fair value of acquired tangible assets (consisting of land, buildings and improvements) "as if vacant." Based on these estimates, we allocated $31,633,000 of the purchase price to land, $17,489,000 to buildings and improvements, $4,047,000 to in-place leases, and $577,000 to below market leases, which is accounted for as a deferred liability.

On August 1, 2018, we acquired fee simple interests in six convenience store and gasoline station properties for $17,412,000 and entered into a unitary lease with a U.S. subsidiary of Applegreen PLC ("Applegreen") at the closing of the transaction. We funded the Applegreen transaction through funds available under our Revolving Facility. The unitary lease provides for an initial term of 15 years, with four five-year renewal options. The unitary lease requires Applegreen to pay a fixed annual rent plus all amounts pertaining to the properties, including environmental expenses, real estate taxes, assessments, license and permit fees, charges for public utilities and all other governmental charges. Rent is scheduled to increase annually during the initial and renewal terms of the lease. The properties are all located within the metropolitan market of Columbia, SC. We accounted for the acquisition of the properties as an asset acquisition. We estimated the fair value of acquired tangible assets (consisting of land, buildings and improvements) "as if vacant." Based on these estimates, we allocated $8,930,000 of the purchase price to land, $6,773,000 to buildings and improvements, $1,371,000 to in-place leases, $773,000 to above market leases and $435,000 to below market leases, which is accounted for as a deferred liability.

In addition, during the nine months ended September 30, 2018, we also acquired fee simple interests in three convenience store and gasoline station, and other automotive related properties for an aggregate purchase price of $4,710,000. We accounted for the acquisitions of fee simple interests as asset acquisitions. We estimated the fair value of acquired tangible assets (consisting of land, buildings and improvements) "as if vacant." Based on these estimates, we allocated $2,517,000 of the purchase price to land, $1,959,000 to buildings and improvements and $234,000 to in-place leases.

2017

During the nine months ended September 30, 2017, we acquired fee simple interests in 64 convenience store and gasoline station properties for an aggregate purchase price of $143,885,000.

On September 6, 2017, we acquired fee simple interests in 49 convenience store and gasoline station properties for $123,126,000 and entered into a unitary lease with Empire Petroleum Partners, LLC ("Empire") at the closing of the transaction. We funded the Empire transaction through a combination of funds from our Equity Offering and funds available under our Revolving Facility. The unitary lease provides for an initial term of 15 years, with four five-year renewal options. The unitary lease requires Empire to pay a fixed annual rent plus all amounts pertaining to the properties including environmental expenses, real estate taxes, assessments, license and permit fees, charges for public utilities and all other governmental charges. Rent is scheduled to increase annually during the initial and renewal terms of the lease. The properties are located primarily within metropolitan markets in the states of Arizona, Colorado, Florida, Georgia, Louisiana, New Mexico and Texas. We accounted for the acquisition of the properties as an asset acquisition. We estimated the fair value of acquired tangible assets (consisting of land, buildings and improvements) "as if

vacant." Based on these estimates, we allocated $75,674,000 of the purchase price to land, $38,205,000 to buildings and improvements, $189,000 to above market leases and $9,058,000 to in-place leases.

On October 3, 2017, we acquired fee simple interests in 33 convenience store and gasoline station properties and five stand-alone Burger King quick service restaurants for $68,710,000 and entered into a unitary lease with a U.S. subsidiary of Applegreen at the closing of the transaction. We funded the Applegreen transaction through a combination of funds from our Equity Offering and funds available under our Revolving Facility. The unitary lease provides for an initial term of 15 years, with four five-year renewal options. The unitary lease requires Applegreen to pay a fixed annual rent plus all amounts pertaining to the properties including environmental expenses, real estate taxes, assessments, license and permit fees, charges for public utilities and all other governmental charges. Rent is scheduled to increase on the fifth anniversary of the commencement of the lease and annually thereafter. The properties are all located within the metropolitan market of Columbia, SC. We accounted for the acquisition of the properties as an asset acquisition. We estimated the fair value of acquired tangible assets (consisting of land, buildings and improvements) "as if vacant." Based on these estimates, we allocated $36,874,000 of the purchase price to land, $27,431,000 to buildings and improvements, $961,000 to above market leases, $1,104,000 to below market leases, which is accounted for as a deferred liability, and $4,548,000 to in-place leases.

In addition, during the nine months ended September 30, 2017, we acquired fee simple interests in 15 convenience store and gasoline station properties, in separate transactions, for an aggregate purchase price of $20,759,000. We accounted for these acquisitions as asset acquisitions. We estimated the fair value of acquired tangible assets for each of these acquisitions (consisting of land, buildings and improvements) "as if vacant." Based on these estimates, we allocated $5,521,000 of the purchase price to land, $12,950,000 to buildings and improvements, $559,000 to below market leases, which is accounted for as a deferred liability, and $2,847,000 to in-place leases.

We evaluated each of the acquisitions and determined that substantially all the fair value related to each acquisition is concentrated in a similar identifiable operating property. Accordingly, these transactions did not meet the definition of a business and consequently were accounted for as asset acquisitions. In each of these transactions, we allocated the total consideration for each acquisition to the individual assets acquired on a relative fair value basis.

NOTE 12. — SUBSEQUENT EVENTS

In preparing our unaudited consolidated financial statements, we have evaluated events and transactions occurring after September 30, 2018, for recognition or disclosure purposes. Based on this evaluation, there were no significant subsequent events from September 30, 2018, through the date the financial statements were issued.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of financial condition and results of operations should be read in conjunction with the sections entitled "Item 1A. Risk Factors" and "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended December 31, 2017; and "Part I, Item 1. Financial Statements" in this Quarterly Report on Form 10-Q.

Cautionary Note Regarding Forward-Looking Statements

Certain statements in this Quarterly Report on Form 10-Q may constitute "forward-looking statements" within the meaning of the federal securities laws, including 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"). Statements preceded by, followed by, or that otherwise include the words "believes," "expects," "seeks," "plans," "projects," "estimates," "anticipates," "predicts" and similar expressions or future or conditional verbs such as "will," "should," "would," "may" and "could" are generally forward-looking in nature and are not historical facts.

Examples of forward-looking statements included in this Quarterly Report on Form 10-Q include, but are not limited to, our prospective future environmental liabilities, including those resulting from preexisting unknown environmental contamination; quantifiable trends, which we believe allow us to make reasonable estimates of fair value for the future costs of environmental remediation resulting from the removal and replacement of USTs; the impact of our redevelopment efforts related to certain of our properties; the amount of revenue we expect to realize from our properties; AFFO as a measure that best represents our core operating performance and its utility in comparing the sustainability of our core operating performance with the sustainability of the core operating performance of other REITs; the reasonableness of our estimates, judgments, projections and assumptions used regarding our accounting policies and methods; our Critical Accounting Policies (as defined below); our exposure and liability due to and our accruals, estimates and assumptions regarding our environmental liabilities and remediation costs; loan loss reserves or allowances; our belief that our accruals for environmental and litigation matters including matters related to our former Newark, New Jersey Terminal and the Lower Passaic River, our MTBE multi-district litigation cases in the states of New Jersey, Pennsylvania and Maryland, and our lawsuit with the State of New York pertaining to a property formerly owned by us in Uniondale NY, were appropriate based on the information then available; our claims for reimbursement of monies expended in the defense and settlement of certain MTBE cases under pollution insurance policies; our beliefs about the settlement proposals we receive and the probable outcome of litigation or regulatory actions and their impact on us; our expected recoveries from UST funds; our indemnification obligations and the indemnification obligations of others; our investment strategy and its impact on our financial performance; the adequacy of our current and anticipated cash flows from operations, borrowings under our Restated Credit Agreement and available cash and cash equivalents; our continued compliance with the covenants in our Restated Credit Agreement, Third Restated Prudential Note Purchase Agreement and MetLife Note Purchase Agreement; our belief that certain environmental liabilities can be allocated to others under various agreements; our beliefs regarding our properties, including their alternative uses and our ability to sell or lease our vacant properties over time; and our ability to maintain our federal tax status as a REIT.

These forward-looking statements are based on our current beliefs and assumptions and information currently available to us, and are subject to known and unknown risks, uncertainties and other factors and were derived utilizing numerous important assumptions that may cause our actual results, performance or achievements to differ materially from any future results, performance or achievements expressed or implied by such forward-looking statements. Factors and assumptions involved in the derivation of forward-looking statements, and the failure of such other assumptions to be realized as well as other factors may also cause actual results to differ materially from those projected. Most of these factors are difficult to predict accurately and are generally beyond our control. These factors and assumptions may have an impact on the continued accuracy of any forward-looking statements that we make.

Factors which may cause actual results to differ materially from our current expectations include, but are not limited to, the risks described in "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2017, as such risk factors may be updated from time to time in our public filings, and risks associated with: complying with environmental laws and regulations and the costs associated with complying with such laws and regulations; counterparty risks; the creditworthiness of our tenants; our tenants' compliance with their lease obligations; renewal of existing leases and our ability to either re-lease or sell properties; our dependence on external sources of capital; the uncertainty of our estimates, judgments, projections and assumptions associated with our accounting policies and methods; our business operations generating sufficient cash for distributions or debt service; potential future acquisitions and redevelopment opportunities; our ability to successfully manage our investment strategy; owning and leasing real estate; adverse developments in general business, economic or political conditions; substantially all of our tenants depending on the same industry for their revenues; property taxes; potential exposure related to pending lawsuits and claims; owning real estate primarily concentrated in the Northeast and Mid-Atlantic regions of the United States; competition in our industry; the adequacy of our insurance coverage and that of our tenants; failure to qualify as a REIT; changes in interest rates and our ability to manage or mitigate this risk effectively; adverse effects of inflation; dilution as a result of future issuances of equity securities; our dividend

policy, ability to pay dividends and changes to our dividend policy; changes in market conditions; provisions in our corporate charter and by-laws; Maryland law discouraging a third-party takeover; the loss of a member or members of our management team; changes in accounting standards; future impairment charges; terrorist attacks and other acts of violence and war; and our information systems.

As a result of these and other factors, we may experience material fluctuations in future operating results on a quarterly or annual basis, which could materially and adversely affect our business, financial condition, operating results, ability to pay dividends or stock price. An investment in our stock involves various risks, including those mentioned above and elsewhere in this Quarterly Report on Form 10-Q and those that are described from time to time in our other filings with the SEC.

You should not place undue reliance on forward-looking statements, which reflect our view only as of the date hereof. Except for our ongoing obligations to disclose material information under the federal securities laws, we undertake no obligation to release publicly any revisions to any forward-looking statements, to report events or to report the occurrence of unanticipated events, unless required by law. For any forward-looking statements contained in this Quarterly Report on Form 10-Q or in any other document, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

General

Real Estate Investment Trust

We are a real estate investment trust ("REIT") specializing in the ownership, leasing and financing of convenience store and gasoline station properties. As of September 30, 2018, we owned 861 properties and leased 77 properties from third-party landlords. As a REIT, we are not subject to federal corporate income tax on the taxable income we distribute to our stockholders. In order to continue to qualify for taxation as a REIT, we are required, among other things, to distribute at least 90% of our ordinary taxable income to our stockholders each year.

Our Triple-Net Leases

Substantially all of our properties are leased on a triple-net basis primarily to petroleum distributors, convenience store retailers and, to a lesser extent, individual operators. Generally, our tenants supply fuel and either operate our properties directly or sublet our properties to operators who operate their convenience stores, gasoline stations, automotive repair service facilities or other businesses at our properties. Our triple-net tenants are generally responsible for the payment of all taxes, maintenance, repairs, insurance and other operating expenses relating to our properties, and are also responsible for environmental contamination occurring during the terms of their leases and in certain cases also for environmental contamination that existed before their leases commenced.

Substantially all of our tenants' financial results depend on the sale of refined petroleum products, convenience store sales or rental income from their subtenants. As a result, our tenants' financial results are highly dependent on the performance of the petroleum marketing industry, which is highly competitive and subject to volatility. During the terms of our leases, we monitor the credit quality of our triple-net tenants by reviewing their published credit rating, if available, reviewing publicly available financial statements, or reviewing financial or other operating statements which are delivered to us pursuant to applicable lease agreements, monitoring news reports regarding our tenants and their respective businesses, and monitoring the timeliness of lease payments and the performance of other financial covenants under their leases. For additional information regarding our real estate business, our properties and environmental matters, see "Item 1. Business — Company Operations", "Item 2. Properties" in our Annual Report on Form 10-K for the year ended December 31, 2017, and "Environmental Matters" below.

Our Properties

Net Lease. As of September 30, 2018, we leased 920 of our properties to tenants under triple-net leases.

Our net lease properties include 817 properties leased under 26 separate unitary or master triple-net leases and 103 properties leased under single unit triple-net leases. These leases generally provide for an initial term of 15 to 20 years with options for successive renewal terms of up to 20 years and periodic rent escalations. Several of our leases provide for additional rent based on the aggregate volume of fuel sold. Certain leases require our tenants to invest capital in our properties.

Redevelopment. As of September 30, 2018, we were actively redeveloping nine of our former convenience store and gasoline station properties either as a new convenience and gasoline use or for alternative single-tenant net lease retail uses. For the nine months ended September 30, 2018, rent commenced on three completed redevelopment projects that were placed back into service in our net lease portfolio.

Vacancies. As of September 30, 2018, nine of our properties were vacant. We expect that we will either sell or enter into new leases on these properties over time.

Investment Strategy and Activity

As part of our overall growth strategy, we regularly review acquisition and financing opportunities to invest in additional convenience store and gasoline station properties, and we expect to continue to pursue investments that we believe will benefit our financial performance. In addition to sale/leaseback and other real estate acquisitions, our investment activities include purchase money financing with respect to properties we sell, and real property loans relating to our leasehold portfolios. Our investment strategy seeks to generate current income and benefit from long-term appreciation in the underlying value of our real estate. To achieve that goal, we seek to invest in high quality individual properties and real estate portfolios that are in strong primary markets that serve high density population centers. A key element of our investment strategy is to invest in properties that will promote our geographic and tenant diversity. We cannot provide any assurance that we will be successful making additional investments, that investments which meet our investment criteria will be available or that our current sources of liquidity will be sufficient to fund such investments.

During the nine months ended September 30, 2018, we acquired fee simple interests in 39 convenience store and gasoline station, and other automotive related properties for an aggregate purchase price of $74.7 million. During the nine months ended September 30, 2017, we acquired fee simple interests in 64 convenience store and gasoline station, and other automotive related properties for an aggregate purchase price of $143.9 million.

Redevelopment Strategy and Activity

We believe that a portion of our properties are located in geographic areas which, together with other factors, may make them well-suited for a new convenience and gasoline use or for alternative single-tenant net lease retail uses, such as quick service restaurants, automotive parts and service stores, specialty retail stores and bank branch locations. We believe that such alternative types of properties can be leased or sold at higher values than their current use.

For the nine months ended September 30, 2018, we spent $2.1 million of construction-in-progress costs related to our redevelopment activities. During the nine months ended September 30, 2018, we transferred $0.4 million of construction-in-progress to buildings and improvements on our consolidated balance sheet. In addition, during the nine months ended September 30, 2018, we spent $1.3 million to reimburse tenants for capital expenditures related to our redevelopment activities. For the nine months ended September 30, 2018, rent commenced on three completed redevelopment projects that were placed back into service in our net lease portfolio.

As of September 30, 2018, we were actively redeveloping nine of our former convenience store and gasoline station properties either as a new convenience and gasoline use or for alternative single-tenant net lease retail uses. In addition, to the nine properties currently classified as redevelopment, we are in various stages of feasibility and planning for the recapture of select properties from our net lease portfolio that are suitable for redevelopment to either a new convenience and gasoline use or for alternative single-tenant net lease retail uses. As of September 30, 2018, we have signed leases on four properties, that are currently part of our net lease portfolio, which will be recaptured and transferred to redevelopment when the appropriate entitlements, permits and approvals have been secured.

Asset Impairment

We perform an impairment analysis for the carrying amounts of our properties in accordance with GAAP when indicators of impairment exist. We reduced the carrying amounts to fair value, and recorded in continuing and discontinued operations, impairment charges aggregating $0.8 million and $4.8 million for the three and nine months ended September 30, 2018, respectively, and $2.4 million and $7.0 million for the three and nine months ended September 30, 2017, respectively, where the carrying amounts of the properties exceed the estimated undiscounted cash flows expected to be received during the assumed holding period which includes the estimated sales value expected to be received at disposition. The impairment charges were attributable to the effect of adding asset retirement costs due to changes in estimates associated with our environmental liabilities, which increased the carrying values of certain properties in excess of their fair values, reductions in estimated undiscounted cash flows expected to be received during the assumed holding period for certain of our properties, and reductions in estimated sales prices from third-party offers based on signed contracts, letters of intent or indicative bids for certain of our properties. The evaluation of and estimates of anticipated cash flows used to conduct our impairment analysis are highly subjective and actual results could vary significantly from our estimates.

Supplemental Non-GAAP Measures

We manage our business to enhance the value of our real estate portfolio and, as a REIT, place particular emphasis on minimizing risk, to the extent feasible, and generating cash sufficient to make required distributions to stockholders of at least 90% of our ordinary taxable income each year. In addition to measurements defined by GAAP, we also focus on Funds From Operations (“FFO”) and Adjusted Funds From Operations (“AFFO”) to measure our performance. FFO and AFFO are generally considered by analysts and investors to be appropriate supplemental non-GAAP measures of the performance of REITs. FFO and AFFO are not in accordance with, or a substitute for, measures prepared in accordance with GAAP. In addition, FFO and AFFO are not based on any

comprehensive set of accounting rules or principles. Neither FFO nor AFFO represent cash generated from operating activities calculated in accordance with GAAP and therefore these measures should not be considered an alternative for GAAP net earnings or as a measure of liquidity. These measures should only be used to evaluate our performance in conjunction with corresponding GAAP measures.

FFO is defined by the National Association of Real Estate Investment Trusts as GAAP net earnings before depreciation and amortization of real estate assets, gains or losses on dispositions of real estate, impairment charges and cumulative effect of accounting changes. Our definition of AFFO is defined as FFO less (i) Revenue Recognition Adjustments (net of allowances), (ii) changes in environmental estimates, (iii) accretion expense, (iv) environmental litigation accruals, (v) insurance reimbursements, (vi) legal settlements and judgments, (vii) acquisition costs expensed and (viii) other unusual items that are not reflective of our core operating performance. Other REITs may use definitions of FFO and/or AFFO that are different from ours and, accordingly, may not be comparable.

Beginning in the fourth quarter of 2017, we revised our definition of AFFO to exclude three additional items – environmental litigation accruals, insurance reimbursements, and legal settlements and judgments – because we believe that these items are not indicative of our core operating performance. While we do not label excluded items as non-recurring, management believes that excluding items from our definition of AFFO that are either non-cash or not reflective of our core operating performance provides analysts and investors the ability to compare our core operating performance between periods. AFFO for the nine months ended September 30, 2017, has been restated to conform to our revised definition.

We believe that FFO and AFFO are helpful to analysts and investors in measuring our performance because both FFO and AFFO exclude various items included in GAAP net earnings that do not relate to, or are not indicative of, our core operating performance. FFO excludes various items such as depreciation and amortization of real estate assets, gains or losses on dispositions of real estate, and impairment charges. In our case, however, GAAP net earnings and FFO typically include the impact of revenue recognition adjustments comprised of deferred rental revenue (straight-line rental revenue), the net amortization of above-market and below-market leases, adjustments recorded for recognition of rental income recognized from direct financing leases on revenues from rental properties and the amortization of deferred lease incentives, as offset by the impact of related collection reserves. Deferred rental revenue results primarily from fixed rental increases scheduled under certain leases with our tenants. In accordance with GAAP, the aggregate minimum rent due over the current term of these leases is recognized on a straight-line basis rather than when payment is contractually due. The present value of the difference between the fair market rent and the contractual rent for in-place leases at the time properties are acquired is amortized into revenues from rental properties over the remaining lives of the in-place leases. Income from direct financing leases is recognized over the lease terms using the effective interest method, which produces a constant periodic rate of return on the net investments in the leased properties. The amortization of deferred lease incentives represents our funding commitment in certain leases, which deferred expense is recognized on a straight-line basis as a reduction of rental revenue. GAAP net earnings and FFO include non-cash changes in environmental estimates and environmental accretion expense, which do not impact our recurring cash flow. GAAP net earnings and FFO also include environmental litigation accruals, insurance reimbursements, and legal settlements and judgments, which items are not indicative of our core operating performance. GAAP net earnings and FFO from time to time may also include property acquisition costs expensed and other unusual items that are not reflective of our core operating performance. Acquisition costs are expensed, generally in the period when properties are acquired and are not reflective of our core operating performance.

We pay particular attention to AFFO, as we believe it best represents our core operating performance. In our view, AFFO provides a more accurate depiction than FFO of our core operating performance. By providing AFFO, we believe that we are presenting useful information that assists analysts and investors to better assess our core operating performance. Further, we believe that AFFO is useful in comparing the sustainability of our core operating performance with the sustainability of the core operating performance of other real estate companies.

A reconciliation of net earnings to FFO and AFFO is as follows (in thousands, except per share amounts):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2018	2017	2018	2017
Net earnings	$ 10,944	$ 9,340	$ 34,516	$ 34,150
Depreciation and amortization of real estate assets	6,068	4,678	17,569	13,465
(Gain) loss on dispositions of real estate	29	(163)	(3,636)	(339)
Impairments	832	2,393	4,808	7,044
Funds from operations	17,873	16,248	53,257	54,320
Revenue recognition adjustments	(487)	(353)	(1,868)	(1,299)
Changes in environmental estimates	(71)	(397)	(679)	(6,116)
Accretion expense	530	825	1,837	2,621
Environmental litigation accruals	26	(36)	26	(106)
Insurance reimbursements	(4)	(480)	(313)	(4,572)
Legal settlements and judgments	—	(105)	(147)	(105)
Adjusted funds from operations	$ 17,867	$ 15,702	$ 52,113	$ 44,743
Basic per share amounts:				
Earnings per share	$ 0.27	$ 0.24	$ 0.85	$ 0.94
Funds from operations per share	0.44	0.42	1.31	1.49
Adjusted funds from operations per share	$ 0.44	$ 0.40	$ 1.28	$ 1.23
Diluted per share amounts:				
Earnings per share	$ 0.27	$ 0.24	$ 0.85	$ 0.94
Funds from operations per share	0.44	0.42	1.31	1.49
Adjusted funds from operations per share	$ 0.44	$ 0.40	$ 1.28	$ 1.23
Weighted average common shares outstanding:				
Basic	40,430	38,702	40,016	35,979
Diluted	40,455	38,702	40,031	35,979

Results of Operations

Three months ended September 30, 2018, compared to the three months ended September 30, 2017

Revenues from rental properties increased by $4.7 million to $29.6 million for the three months ended September 30, 2018, as compared to $24.9 million for the three months ended September 30, 2017. The increase in revenues from rental properties was primarily due to $4.6 million of revenue from properties acquired in 2018 and the second half of 2017. Rental income contractually due from our tenants included in revenues from rental properties in continuing operations was $29.1 million for the three months ended September 30, 2018, as compared to $24.5 million for the three months ended September 30, 2017. Tenant reimbursements, which consist of real estate taxes and other municipal charges paid by us which are reimbursable by our tenants pursuant to the terms of triple-net lease agreements were $4.3 million and $3.8 million for the three months ended September 30, 2018 and 2017, respectively. Interest income on notes and mortgages receivable was $0.8 million for the three months ended September 30, 2018 and 2017.

In accordance with GAAP, we recognize revenues from rental properties in amounts which vary from the amount of rent contractually due during the periods presented. As a result, revenues from rental properties include Revenue Recognition Adjustments comprised of non-cash adjustments recorded for deferred rental revenue due to the recognition of rental income on a straight-line basis over the current lease term, the net amortization of above-market and below-market leases, recognition of rental income under direct financing leases using the effective interest rate method which produces a constant periodic rate of return on the net investments in the leased properties and the amortization of deferred lease incentives. Revenues from rental properties includes Revenue Recognition Adjustments which increased rental revenue by $0.5 million and $0.4 million for the three months ended September 30, 2018 and 2017, respectively.

Property costs, which are primarily comprised of rent expense, real estate and other state and local taxes, municipal charges, maintenance expense and reimbursable tenant expenses, were $5.6 million for the three months ended September 30, 2018, as compared to $5.3 million for the three months ended September 30, 2017. The increase in property costs for the three months ended September 30, 2018, was principally due to an increase in reimbursable and non-reimbursable real estate taxes, partially offset by decreases in rent and maintenance expenses.

Impairment charges included in continuing operations were $0.7 million for the three months ended September 30, 2018, as compared to $2.2 million for the three months ended September 30, 2017. Impairment charges are recorded when the carrying value

of a property is reduced to fair value. Impairment charges in continuing operations for the three months ended September 30, 2018 and 2017, were attributable to the effect of adding asset retirement costs due to changes in estimates associated with our environmental liabilities, which increased the carrying values of certain properties in excess of their fair values, reductions in estimated undiscounted cash flows expected to be received during the assumed holding period for certain of our properties, and reductions in estimated sales prices from third-party offers based on signed contracts, letters of intent or indicative bids for certain of our properties.

Environmental expenses included in continuing operations for the three months ended September 30, 2018, increased by $0.2 million to $1.2 million, as compared to $1.0 million for the three months ended September 30, 2017. The increase in environmental expenses for the three months ended September 30, 2018, was principally due to increases in environmental legal and professional fees, and net environmental remediation costs. Environmental expenses vary from period to period and, accordingly, undue reliance should not be placed on the magnitude or the direction of changes in reported environmental expenses for one period, as compared to prior periods.

General and administrative expense was $3.6 million for the three months ended September 30, 2018, as compared to $3.4 million for the three months ended September 30, 2017. The increase in general and administrative expense for the three months ended September 30, 2018, was principally due to an increase in legal fees and employee related expenses.

Depreciation and amortization expense was $6.1 million for the three months ended September 30, 2018, as compared to $4.7 million for the three months ended September 30, 2017. The increase in depreciation and amortization expense was primarily due to depreciation and amortization charges related to properties acquired, partially offset by the effect of certain assets becoming fully depreciated and dispositions of real estate.

Other income was an expense of $0.1 million for the three months ended September 30, 2018, as compared to income of $0.9 million for the three months ended September 30, 2017. For the three months ended September 30, 2018, other income was primarily attributable to $0.1 million payment made for the recapture of a property for redevelopment. Other income for the three months ended September 30, 2017, was primarily attributable to $0.5 million received from insurance carriers for reimbursement of environmental costs and a $0.2 million easement award.

Interest expense was $6.1 million for the three months ended September 30, 2018, as compared to $4.3 million for the three months ended September 30, 2017. The increase was due to higher average borrowings outstanding and an increase in average interest rates on borrowings outstanding for the three months ended September 30, 2018, as compared to the three months ended September 30, 2017.

Loss from discontinued operations was $0.1 million for the three months ended September 30, 2018 and 2017. For the three months ended September 30, 2018, environmental credits recorded in discontinued operations were $30 thousand as compared to $0.1 million for the three months ended September 30, 2017. For the three months ended September 30, 2018, impairment charges recorded in discontinued operations were $0.1 million as compared to $0.2 million for the three months ended September 30, 2017, and were attributable to the accumulation of asset retirement costs as a result of increases in estimated environmental liabilities which increased the carrying values of discontinued properties above their fair values. Environmental expenses and impairment charges vary from period to period and, accordingly, undue reliance should not be placed on the magnitude or the direction of changes for one period, as compared to prior periods.

For the three months ended September 30, 2018, FFO was $17.9 million as compared to $16.2 million for the three months ended September 30, 2017. For the three months ended September 30, 2018, AFFO increased by $2.2 million to $17.9 million, as compared to $15.7 million for the prior period. FFO for the three months ended September 30, 2018, was impacted by the changes in net earnings but excludes a $1.6 million decrease in impairment charges, a $0.2 million decrease in gains on dispositions of real estate and a $1.4 million increase in depreciation and amortization expense. The increase in AFFO for the three months ended September 30, 2018, also excludes a $0.5 million decrease in insurance reimbursements, a $0.1 million decrease in legal settlements and judgements, and a $0.1 million increase in Revenue Recognition Adjustments.

Nine months ended September 30, 2018, compared to the nine months ended September 30, 2017

Revenues from rental properties increased by $13.7 million to $86.9 million for the nine months ended September 30, 2018, as compared to $73.2 million for the nine months ended September 30, 2017. The increase in revenues from rental properties was primarily due to $14.0 million of revenue from properties acquired in 2018 and the second half of 2017. Rental income contractually due from our tenants included in revenues from rental properties was $85.0 million for the nine months ended September 30, 2018, as compared to $71.9 million for the nine months ended September 30, 2017. Tenant reimbursements, which consist of real estate taxes and other municipal charges paid by us which are reimbursable by our tenants pursuant to the terms of triple-net lease agreements were $11.9 million and $10.7 million for the nine months ended September 30, 2018 and 2017, respectively. Interest income on notes and mortgages receivable was $2.3 million for the nine months ended September 30, 2018 and 2017.

In accordance with GAAP, we recognize revenues from rental properties in amounts which vary from the amount of rent contractually due during the periods presented. As a result, revenues from rental properties include Revenue Recognition Adjustments

comprised of non-cash adjustments recorded for deferred rental revenue due to the recognition of rental income on a straight-line basis over the current lease term, the net amortization of above-market and below-market leases, recognition of rental income under direct financing leases using the effective interest rate method which produces a constant periodic rate of return on the net investments in the leased properties and the amortization of deferred lease incentives. Revenues from rental properties includes Revenue Recognition Adjustments which increased rental revenue by $1.9 million and $1.3 million for the nine months ended September 30, 2018 and 2017, respectively.

Property costs, which are primarily comprised of rent expense, real estate and other state and local taxes, municipal charges, maintenance expense and reimbursable tenant expenses, were $17.0 million for the nine months ended September 30, 2018, as compared to $15.4 million for the nine months ended September 30, 2017. The increase in property costs for the nine months ended September 30, 2018, was principally due to an increase in reimbursable and non-reimbursable real estate taxes offset by decreases in rent and maintenance expenses.

Impairment charges included in continuing operations were $4.0 million for the nine months ended September 30, 2018, as compared to $6.5 million for the nine months ended September 30, 2017. Impairment charges are recorded when the carrying value of a property is reduced to fair value. Impairment charges in continuing operations for the nine months ended September 30, 2018 and 2017, were attributable to the effect of adding asset retirement costs due to changes in estimates associated with our environmental liabilities, which increased the carrying values of certain properties in excess of their fair values, reductions in estimated undiscounted cash flows expected to be received during the assumed holding period for certain of our properties, and reductions in estimated sales prices from third-party offers based on signed contracts, letters of intent or indicative bids for certain of our properties.

Environmental expenses included in continuing operations for the nine months ended September 30, 2018, increased by $3.0 million to $3.9 million, as compared to $0.9 million for the nine months ended September 30, 2017. The increase in environmental expenses for the nine months ended September 30, 2018, was principally due to increases in environmental legal and professional fees, and net environmental remediation costs. Environmental expenses vary from period to period and, accordingly, undue reliance should not be placed on the magnitude or the direction of changes in reported environmental expenses for one period, as compared to prior periods.

General and administrative expense was $11.0 million for the nine months ended September 30, 2018, as compared to $10.6 million for the nine months ended September 30, 2017. The increase in general and administrative expense for the nine months ended September 30, 2018, was principally due to an increase in public company and employee related expenses.

Depreciation and amortization expense was $17.6 million for the nine months ended September 30, 2018, as compared to $13.5 million for the nine months ended September 30, 2017. The increase in depreciation and amortization expense was primarily due to depreciation and amortization charges related to properties acquired, partially offset by the effect of certain assets becoming fully depreciated and dispositions of real estate.

Other income was $0.5 million for the nine months ended September 30, 2018, as compared to $5.0 million for the nine months ended September 30, 2017. For the nine months ended September 30, 2018, other income was primarily attributable to $0.3 million received from insurance carriers for reimbursement of environmental costs and $0.1 million received from legal settlements and judgments. Other income for the nine months ended September 30, 2017, was primarily attributable to a $3.8 million insurance settlement for reimbursement of previously incurred environmental settlement costs and legal expenses, $0.5 million received from insurance carriers for reimbursement of environmental costs and a $0.2 million easement award.

Interest expense was $16.4 million for the nine months ended September 30, 2018, as compared to $12.7 million for the nine months ended September 30, 2017. The increase was due to higher average borrowings outstanding and an increase in average interest rates on borrowings outstanding for the nine months ended September 30, 2018, as compared to the nine months ended September 30, 2017.

Loss from discontinued operations was $0.5 million for the nine months ended September 30, 2018, as compared to earnings of $2.4 million for the nine months ended September 30, 2017. The decrease in earnings for the nine months ended September 30, 2018, was primarily due to lower environmental credits. For the nine months ended September 30, 2018 and 2017, impairment charges recorded in discontinued operations of $0.8 million and $0.5 million, respectively, were attributable to the accumulation of asset retirement costs as a result of increases in estimated environmental liabilities which increased the carrying values of discontinued properties above their fair values. Environmental expenses and impairment charges vary from period to period and, accordingly, undue reliance should not be placed on the magnitude or the direction of changes for one period, as compared to prior periods.

For the nine months ended September 30, 2018, FFO was $53.3 million as compared to $54.3 million for the nine months ended September 30, 2017. For the nine months ended September 30, 2018, AFFO increased by $7.4 million to $52.1 million, as compared to $44.7 million for the prior period. FFO for the nine months ended September 30, 2018, was impacted by the changes in net earnings but excludes a $2.2 million decrease in impairment charges, a $3.3 million increase in gains on dispositions of real estate and a $4.1 million increase in depreciation and amortization expense. The increase in AFFO for the nine months ended September 30, 2018, also

excludes a $4.2 million decrease in insurance reimbursements, a $0.1 million increase in environmental litigation accruals, a $4.7 million increase in environmental estimates and accretion expense and a $0.6 million increase in Revenue Recognition Adjustments.

Liquidity and Capital Resources

Our principal sources of liquidity are the cash flows from our operations, funds available under our Revolving Facility which is scheduled to mature in March 2022 and available cash and cash equivalents. Our business operations and liquidity are dependent on our ability to generate cash flow from our properties. We believe that our operating cash needs for the next twelve months can be met by cash flows from operations, borrowings under our Restated Credit Agreement, proceeds from the sale of shares of our common stock under our ATM Program and available cash and cash equivalents.

Our cash flow activities for the nine months ended September 30, 2018 and 2017, are summarized as follows (in thousands):

	Nine Months Ended September 30,	
	2018	2017
Net cash flow provided by operating activities	$ 46,487	$ 40,199
Net cash flow (used in) investing activities	(71,478)	(137,576)
Net cash flow provided by financing activities	$ 24,183	$ 103,043

Operating Activities

Net cash flow from operating activities increased by $6.3 million for the nine months ended September 30, 2018, to $46.5 million, as compared to $40.2 million for the nine months ended September 30, 2017. Net cash provided by operating activities represents cash received primarily from rental and interest income less cash used for property costs, environmental expenses, general and administrative expense and interest expense. The change in net cash flow provided by operating activities for the nine months ended September 30, 2018 and 2017, is primarily the result of changes in revenues and expenses as discussed in “Results of Operations” above.

Investing Activities

Our investing activities are primarily real estate-related transactions. Since we generally lease our properties on a triple-net basis, we have not historically incurred significant capital expenditures other than those related to investments in real estate and our redevelopment activities. Net cash flow used in investing activities decreased by $66.1 million for the nine months ended September 30, 2018, to a use of $71.5 million, as compared to a use of $137.6 million for the nine months ended September 30, 2017. The decrease in net cash flow used in investing activities for the nine months ended September 30, 2018, was primarily due to a decrease of $69.2 million in property acquisitions.

Financing Activities

Net cash flows provided by financing activities decreased by $78.8 million for the nine months ended September 30, 2018, to $24.2 million, as compared to $103.0 million for the nine months ended September 30, 2017. The decrease in net cash flow provided by financing activities was primarily due to a decrease in net proceeds from issuances of common stock of $92.2 million, an increase in dividends paid of $9.2 million and an increase of $3.2 million in credit agreement and unsecured note origination costs partially offset by an increase in net borrowings of $25.0 million.

Credit Agreement

On June 2, 2015, we entered into a $225.0 million senior unsecured credit agreement (the “Credit Agreement”) with a group of banks led by Bank of America, N.A. (the “Bank Syndicate”). The Credit Agreement consisted of a $175.0 million unsecured revolving credit facility (the “Revolving Facility”) and a $50.0 million unsecured term loan (the “Term Loan”).

On March 23, 2018, we entered in to an amended and restated credit agreement (as amended, as described below, the “Restated Credit Agreement”) amending and restating our Credit Agreement. Pursuant to the Restated Credit Agreement, we (a) increased the borrowing capacity under the Revolving Facility from $175.0 million to $250.0 million, (b) extended the maturity date of the Revolving Facility from June 2018 to March 2022, (c) extended the maturity date of the Term Loan from June 2020 to March 2023 and (d) amended certain financial covenants and provisions.

Subject to the terms of the Restated Credit Agreement and our continued compliance with its provisions, we have the option to (a) extend the term of the Revolving Facility for one additional year to March 2023 and (b) request that the lenders approve an increase of up to $300.0 million in the amount of the Revolving Facility and/or Term Loan to $600.0 million in the aggregate.

The Restated Credit Agreement incurs interest and fees at various rates based on our total indebtedness to total asset value ratio at the end of each quarterly reporting period. The Revolving Facility permits borrowings at an interest rate equal to the sum of a base

rate plus a margin of 0.50% to 1.30% or a LIBOR rate plus a margin of 1.50% to 2.30%. The annual commitment fee on the undrawn funds under the Revolving Facility is 0.15% to 0.25%. The Term Loan bears interest at a rate equal to the sum of a base rate plus a margin of 0.45% to 1.25% or a LIBOR rate plus a margin of 1.45% to 2.25%. The Term Loan does not provide for scheduled reductions in the principal balance prior to its maturity.

On September 19, 2018, we entered into an amendment (the "Amendment") of our Restated Credit Agreement. The Amendment modifies the Restated Credit Agreement to, among other things: (i) reflect our previously announced entrance on June 21, 2018, into (a) an amended and restated note purchase and guarantee agreement with The Prudential Insurance Company of America ("Prudential") and certain of its affiliates and (b) a note purchase and guarantee agreement with the Metropolitan Life Insurance Company ("MetLife")and certain of its affiliates; and (ii) permit borrowings under each of the Revolving Facility and the Term Loan at three different interest rates, including a rate based on the LIBOR Daily Floating Rate (as defined in the Amendment) plus the Applicable Rate (as defined in the Amendment) for such facility.

Senior Unsecured Notes

On June 21, 2018, we entered into a third amended and restated note purchase and guarantee agreement (the "Third Restated Prudential Note Purchase Agreement") amending and restating our existing senior note purchase agreement with Prudential and certain of its affiliates. Pursuant to the Third Restated Prudential Note Purchase Agreement, we agreed that our (a) 6.0% Series A Guaranteed Senior Notes due February 25, 2021, in the original aggregate principal amount of $100.0 million (the "Series A Notes"), (b) 5.35% Series B Guaranteed Senior Notes due June 2, 2023, in the original aggregate principal amount of $75.0 million (the "Series B Notes") and (c) 4.75% Series C Guaranteed Senior Notes due February 25, 2025, in the aggregate principal amount of $50.0 million (the "Series C Notes") that were outstanding under the existing senior note purchase agreement would continue to remain outstanding under the Third Restated Prudential Note Purchase Agreement and we authorized and issued our 5.47% Series D Guaranteed Senior Notes due June 21, 2028, in the aggregate principal amount of $50.0 million (the "Series D Notes" and, together with the Series A Notes, Series B Notes and Series C Notes the "Notes"). The Third Restated Prudential Note Purchase Agreement does not provide for scheduled reductions in the principal balance of the Notes prior to their respective maturities.

On June 21, 2018, we entered into a note purchase and guarantee agreement (the "MetLife Note Purchase Agreement") with MetLife and certain of its affiliates. Pursuant to the MetLife Note Purchase Agreement, we authorized and issued our 5.47% Series E Guaranteed Senior Notes due June 21, 2028, in the aggregate principal amount of $50.0 million (the "Series E Notes"). The MetLife Note Purchase Agreement does not provide for scheduled reductions in the principal balance of the Series E Notes prior to its maturity.

Equity Offering

On July 10, 2017, we entered into an underwriting agreement (the "Underwriting Agreement") with Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC and KeyBanc Capital Markets Inc., as representatives of the several underwriters (the "Underwriters"), pursuant to which we sold to the Underwriters 4.1 million shares of common stock (the "Equity Offering"). Pursuant to the terms of the Underwriting Agreement, we granted the Underwriters a 30-day option to purchase up to an additional 0.6 million shares of common stock. We received net proceeds from the Equity Offering, including the full exercise by the Underwriters of their option to purchase additional shares, of $104.3 million after deducting the underwriting discount and offering expenses. The net proceeds of the Equity Offering were used to repay amounts outstanding under our Revolving Facility and subsequently were used to fund the Empire and Applegreen transactions.

ATM Program

In June 2016, we established an at-the-market equity offering program (the "2016 ATM Program"), pursuant to which we were able to issue and sell shares of our common stock with an aggregate sales price of up to $125.0 million through a consortium of banks acting as agents. The 2016 ATM Program was terminated in January 2018.

In March 2018, we established a new at-the-market equity offering program (the "ATM Program"), pursuant to which we are able to issue and sell shares of our common stock with an aggregate sales price of up to $125.0 million through a consortium of banks acting as agents. Sales of the shares of common stock may be made, as needed, from time to time in at-the-market offerings as defined in Rule 415 of the Securities Act, including by means of ordinary brokers' transactions on the New York Stock Exchange or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or as otherwise agreed to with the applicable agent.

During the three and nine months ended September 30, 2018, we issued 248,000 and 785,000 shares of common stock, respectively, and received net proceeds of $6.9 million and $20.7 million, respectively. During the three and nine months ended September 30, 2017, we issued 97,000 and 329,000 shares of common stock, respectively, and received net proceeds of $2.7 million and $8.5 million, respectively. Future sales, if any, will depend on a variety of factors to be determined by us from time to time, including among others, market conditions, the trading price of our common stock, determinations by us of the appropriate sources of funding for us and potential uses of funding available to us.

Property Acquisitions and Capital Expenditures

As part of our overall business strategy, we regularly review opportunities to acquire additional properties and we expect to continue to pursue acquisitions that we believe will benefit our financial performance.

During the nine months ended September 30, 2018, we acquired fee simple interests in 39 convenience store and gasoline station, and other automotive related properties for an aggregate purchase price of $74.7 million. During the nine months ended September 30, 2017, we acquired fee simple interests in 64 convenience store and gasoline station, and other automotive related properties for an aggregate purchase price of $143.9 million. We accounted for the acquisitions of fee simple interests as asset acquisitions. See Note 11 for additional information.

We are reviewing select opportunities for capital expenditures, redevelopment and alternative uses for certain of our properties. We are also seeking to recapture select properties from our net lease portfolio to redevelop such properties either for a new convenience and gasoline use or for an alternative single-tenant net lease retail use. For the nine months ended September 30, 2018, we spent $2.1 million of construction-in-progress costs related to our redevelopment activities. In addition, during the nine months ended September 30, 2018, we spent $1.3 million to reimburse tenants for capital expenditures related to our redevelopment activities.

Since we generally lease our properties on a triple-net basis, we have not historically incurred significant capital expenditures other than those related to acquisitions. However, our tenants frequently make improvements to the properties leased from us at their expense. As of September 30, 2018, we have a remaining commitment to fund up to $7.9 million in the aggregate in capital improvements in certain properties previously leased to Marketing and now subject to unitary triple-net leases with other tenants.

Dividends

We elected to be treated as a REIT under the federal income tax laws with the year beginning January 1, 2001. To qualify for taxation as a REIT, we must, among other requirements such as those related to the composition of our assets and gross income, distribute annually to our stockholders at least 90% of our taxable income, including taxable income that is accrued by us without a corresponding receipt of cash. We cannot provide any assurance that our cash flows will permit us to continue paying cash dividends.

It is also possible that instead of distributing 100% of our taxable income on an annual basis, we may decide to retain a portion of our taxable income and to pay taxes on such amounts as permitted by the Internal Revenue Service. Payment of dividends is subject to market conditions, our financial condition, including but not limited to, our continued compliance with the provisions of the Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement, the MetLife Note Purchase Agreement and other factors, and therefore is not assured. In particular, our Restated Credit Agreement, the Third Restated Prudential Note Purchase Agreement and the MetLife Note Purchase Agreement prohibit the payment of dividends during certain events of default.

Regular quarterly dividends paid to our stockholders for the nine months ended September 30, 2018, were $38.8 million, or $0.96 per share. There can be no assurance that we will continue to pay dividends at historical rates.

Critical Accounting Policies and Estimates

The consolidated financial statements included in this Quarterly Report on Form 10-Q have been prepared in conformity with accounting principles generally accepted in the United States of America. The preparation of consolidated financial statements in accordance with GAAP requires us to make estimates, judgments and assumptions that affect the amounts reported in our consolidated financial statements. Although we have made estimates, judgments and assumptions regarding future uncertainties relating to the information included in our consolidated financial statements, giving due consideration to the accounting policies selected and materiality, actual results could differ from these estimates, judgments and assumptions and such differences could be material.

Estimates, judgments and assumptions underlying the accompanying consolidated financial statements include, but are not limited to, real estate, receivables, deferred rent receivable, direct financing leases, depreciation and amortization, impairment of long-lived assets, environmental remediation obligations, litigation, accrued liabilities, income taxes and the allocation of the purchase price of properties acquired to the assets acquired and liabilities assumed. The information included in our consolidated financial statements that is based on estimates, judgments and assumptions is subject to significant change and is adjusted as circumstances change and as the uncertainties become more clearly defined.

Our accounting policies are described in Note 1 in "Item 8. Financial Statements and Supplementary Data" in our Annual Report on Form 10-K for the year ended December 31, 2017. The SEC's Financial Reporting Release ("FRR") No. 60, *Cautionary Advice Regarding Disclosure About Critical Accounting Policies* ("FRR 60"), suggests that companies provide additional disclosure on those accounting policies considered most critical. FRR 60 considers an accounting policy to be critical if it is important to our financial condition and results of operations and requires significant judgment and estimates on the part of management in its application. We believe that our most critical accounting policies relate to revenue recognition and deferred rent receivable, direct financing leases, impairment of long-lived assets, environmental remediation obligations, litigation, income taxes, and the allocation of the purchase price of properties acquired to the assets acquired and liabilities assumed (collectively, our "Critical Accounting

Policies"), each of which is discussed in "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" in our Annual Report on Form 10-K for the year ended December 31, 2017.

Environmental Matters

General

We are subject to numerous federal, state and local laws and regulations, including matters relating to the protection of the environment such as the remediation of known contamination and the retirement and decommissioning or removal of long-lived assets including buildings containing hazardous materials, USTs and other equipment. Environmental costs are principally attributable to remediation costs which are incurred for, among other things, removing USTs, excavation of contaminated soil and water, installing, operating, maintaining and decommissioning remediation systems, monitoring contamination and governmental agency compliance reporting required in connection with contaminated properties. We seek reimbursement from state UST remediation funds related to these environmental costs where available. The estimated future costs for known environmental remediation requirements are accrued when it is probable that a liability has been incurred and a reasonable estimate of fair value can be made. The accrued liability is the aggregate of our estimate of the fair value of cost for each component of the liability, net of estimated recoveries from state UST remediation funds considering estimated recovery rates developed from prior experience with the funds.

In July 2012, we purchased a 10-year pollution legal liability insurance policy covering substantially all of our properties at that time for preexisting unknown environmental liabilities and new environmental events. The policy has a $50.0 million aggregate limit and is subject to various self-insured retentions and other conditions and limitations. Our intention in purchasing this policy was to obtain protection predominantly for significant events. No assurances can be given that we will obtain a net financial benefit from this investment. In addition to the environmental insurance policy purchased by the Company, we also took assignment of certain environmental insurance policies, and rights to reimbursement for claims made thereunder, from Marketing, by order of the U.S. Bankruptcy Court during Marketing's bankruptcy proceedings. Under these assigned polices, we have received and expect to continue to receive reimbursement of certain remediation expenses for covered claims.

We enter into leases and various other agreements which contractually allocate responsibility between the parties for known and unknown environmental liabilities at or relating to the subject properties. We are contingently liable for these environmental obligations in the event that our tenant or other counterparty does not satisfy them. It is possible that our assumptions regarding the ultimate allocation method and share of responsibility that we used to allocate environmental liabilities may change, which may result in material adjustments to the amounts recorded for environmental litigation accruals and environmental remediation liabilities. We are required to accrue for environmental liabilities that we believe are allocable to others under our leases and other agreements if we determine that it is probable that our tenant or other counterparty will not meet its environmental obligations. We may ultimately be responsible to pay for environmental liabilities as the property owner if our tenant or other counterparty fails to pay them. We assess whether to accrue for environmental liabilities based upon relevant factors including our tenants' histories of paying for such obligations, our assessment of their financial capability, and their intent to pay for such obligations. However, there can be no assurance that our assessments are correct or that our tenants who have paid their obligations in the past will continue to do so. The ultimate resolution of these matters could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

For substantially all of our triple-net leases, our tenants are contractually responsible for compliance with environmental laws and regulations, removal of USTs at the end of their lease term (the cost of which in certain cases is partially borne by us) and remediation of any environmental contamination that arises during the term of their tenancy. Under the terms of our leases covering properties previously leased to Marketing (substantially all of which commenced in 2012), we have agreed to be responsible for environmental contamination at the premises that was known at the time the lease commenced, and for environmental contamination discovered (other than as a result of a voluntary site investigation) during the first 10 years of the lease term (or a shorter period for a minority of such leases). After expiration of such 10-year (or, in certain cases, shorter) period, responsibility for all newly discovered contamination, even if it relates to periods prior to commencement of the lease, is contractually allocated to our tenant. Our tenants at properties previously leased to Marketing are in all cases responsible for the cost of any remediation of contamination that results from their use and occupancy of our properties. Under substantially all of our other triple-net leases, responsibility for remediation of all environmental contamination discovered during the term of the lease (including known and unknown contamination that existed prior to commencement of the lease) is the responsibility of our tenant.

We anticipate that a majority of the USTs at properties previously leased to Marketing will be replaced over the next several years because these USTs are either at or near the end of their useful lives. For long-term, triple-net leases covering sites previously leased to Marketing, our tenants are responsible for the cost of removal and replacement of USTs and for remediation of contamination found during such UST removal and replacement, unless such contamination was found during the first 10 years of the lease term and also existed prior to commencement of the lease. In those cases, we are responsible for costs associated with the remediation of such contamination. We have also agreed to be responsible for environmental contamination that existed prior to the sale of certain properties assuming the contamination is discovered (other than as a result of a voluntary site investigation) during the

first five years after the sale of the properties. For properties that are vacant, we are responsible for costs associated with UST removals and for the cost of remediation of contamination found during the removal of USTs.

In the course of certain UST removals and replacements at properties previously leased to Marketing where we retained continuing responsibility for preexisting environmental obligations, previously unknown environmental contamination was and continues to be discovered. As a result, we have developed a reasonable estimate of fair value for the prospective future environmental liability resulting from preexisting unknown environmental contamination and have accrued for these estimated costs. These estimates are based primarily upon quantifiable trends which we believe allow us to make reasonable estimates of fair value for the future costs of environmental remediation resulting from the removal and replacement of USTs. Our accrual of the additional liability represents our estimate of the fair value of cost for each component of the liability, net of estimated recoveries from state UST remediation funds considering estimated recovery rates developed from prior experience with the funds. In arriving at our accrual, we analyzed the ages of USTs at properties where we would be responsible for preexisting contamination found within 10 years after commencement of a lease (for properties subject to long-term triple-net leases) or five years from a sale (for divested properties), and projected a cost to closure for new environmental contamination.

We measure our environmental remediation liabilities at fair value based on expected future net cash flows, adjusted for inflation (using a range of 2.0% to 2.75%), and then discount them to present value (using a range of 4.0% to 7.0%). We adjust our environmental remediation liabilities quarterly to reflect changes in projected expenditures, changes in present value due to the passage of time and reductions in estimated liabilities as a result of actual expenditures incurred during each quarter. As of September 30, 2018, we had accrued a total of $60.9 million for our prospective environmental remediation obligations. This accrual consisted of (a) $15.8 million, which was our estimate of reasonably estimable environmental remediation liability, including obligations to remove USTs for which we are responsible, net of estimated recoveries and (b) $45.1 million for future environmental liabilities related to preexisting unknown contamination. As of December 31, 2017, we had accrued a total of $63.6 million for our prospective environmental remediation obligations. This accrual consisted of (a) $18.6 million, which was our estimate of reasonably estimable environmental remediation liability, including obligations to remove USTs for which we are responsible, net of estimated recoveries and (b) $45.0 million for future environmental liabilities related to preexisting unknown contamination.

Environmental liabilities are accreted for the change in present value due to the passage of time and, accordingly, $1.8 million and $2.6 million of net accretion expense was recorded for the nine months ended September 30, 2018 and 2017, respectively, which is included in environmental expenses. In addition, during the nine months ended September 30, 2018 and 2017, we recorded credits to environmental expenses, included in continuing and discontinued operations, aggregating $0.7 million and $6.1 million, respectively, where decreases in estimated remediation costs exceeded the depreciated carrying value of previously capitalized asset retirement costs. Environmental expenses also include project management fees, legal fees and environmental litigation accruals.

During the nine months ended September 30, 2018 and 2017, we increased the carrying values of certain of our properties by $3.0 million and $3.6 million, respectively, due to changes in estimated environmental remediation costs. The recognition and subsequent changes in estimates in environmental liabilities and the increase or decrease in carrying values of the properties are non-cash transactions which do not appear on the face of the consolidated statements of cash flows.

Capitalized asset retirement costs are being depreciated over the estimated remaining life of the UST, a 10-year period if the increase in carrying value is related to environmental remediation obligations or such shorter period if circumstances warrant, such as the remaining lease term for properties we lease from others. Depreciation and amortization expense related to capitalized asset retirement costs in our consolidated statements of operations for the nine months ended September 30, 2018 and 2017, was $3.2 million and $3.3 million, respectively. Capitalized asset retirement costs were $45.1 million (consisting of $19.5 million of known environmental liabilities and $25.6 million of reserves for future environmental liabilities) as of September 30, 2018, and $45.4 million (consisting of $18.7 million of known environmental liabilities and $26.7 million of reserves for future environmental liabilities) as of December 31, 2017. We recorded impairment charges aggregating $2.5 million and $5.0 million for the nine months ended September 30, 2018 and 2017, respectively, in continuing and discontinued operations for capitalized asset retirement costs.

Environmental exposures are difficult to assess and estimate for numerous reasons, including the extent of contamination, alternative treatment methods that may be applied, location of the property which subjects it to differing local laws and regulations and their interpretations, as well as the time it takes to remediate contamination and receive regulatory approval. In developing our liability for estimated environmental remediation obligations on a property by property basis, we consider, among other things, enacted laws and regulations, assessments of contamination and surrounding geology, quality of information available, currently available technologies for treatment, alternative methods of remediation and prior experience. Environmental accruals are based on estimates which are subject to significant change, and are adjusted as the remediation treatment progresses, as circumstances change, and as environmental contingencies become more clearly defined and reasonably estimable.

Our estimates are based upon facts that are known to us at this time and an assessment of the possible ultimate remedial action outcomes. It is possible that our assumptions, which form the basis of our estimates, regarding our ultimate environmental liabilities may change, which may result in our providing an accrual, or adjustments to the amounts recorded, for environmental remediation liabilities. Among the many uncertainties that impact the estimates are our assumptions, the necessary regulatory approvals for, and

potential modifications of remediation plans, the amount of data available upon initial assessment of contamination, changes in costs associated with environmental remediation services and equipment, the availability of state UST remediation funds and the possibility of existing legal claims giving rise to additional claims, and possible changes in the environmental rules and regulations, enforcement policies, and reimbursement programs of various states.

In light of the uncertainties associated with environmental expenditure contingencies, we are unable to estimate ranges in excess of the amount accrued with any certainty; however, we believe that it is possible that the fair value of future actual net expenditures could be substantially higher than amounts currently recorded by us. Adjustments to accrued liabilities for environmental remediation obligations will be reflected in our consolidated financial statements as they become probable and a reasonable estimate of fair value can be made. Additional environmental liabilities could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

Environmental Litigation

We are subject to various legal proceedings and claims which arise in the ordinary course of our business. As of September 30, 2018 and December 31, 2017, we had accrued $12.3 million for certain of these matters which we believe were appropriate based on information then currently available. It is possible that our assumptions regarding the ultimate allocation method and share of responsibility that we used to allocate environmental liabilities may change, which may result in our providing an accrual, or adjustments to the amounts recorded, for environmental litigation accruals. Matters related to our former Newark, New Jersey Terminal and Lower Passaic River, our MTBE litigations in the states of New Jersey, Pennsylvania and Maryland, and our lawsuit with the State of New York pertaining to a property formerly owned by us in Uniondale, New York, in particular, could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price. For additional information with respect to these and other pending environmental lawsuits and claims, see "Item 3. Legal Proceedings" in our Annual Report on Form 10-K for the year ended December 31, 2017, and "Part II, Item 1. Legal Proceedings" and Note 4 in "Part I, Item 1. Financial Statements" in (i) our Quarterly Report on Form 10-Q for the period ended June 30, 2018, and (ii) this Quarterly Report on Form 10-Q.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to interest rate risk, primarily as a result of our $300.0 million senior unsecured credit agreement entered into on March 23, 2018, and amended on September 19, 2018 (as amended, the "Restated Credit Agreement"), with a group of commercial banks led by Bank of America, N.A. (the "Bank Syndicate"). The Restated Credit Agreement consists of a $250.0 million unsecured revolving facility (the "Revolving Facility"), which is scheduled to mature in March 2022 and a $50.0 million unsecured term loan (the "Term Loan"), which is scheduled to mature in March 2023. Subject to the terms of the Restated Credit Agreement and our continued compliance with its provisions, we have the option to (a) extend the term of the Revolving Facility for one additional year to March 2023 and (b) request that the lenders approve an increase of up to $300.0 million in the amount of the Revolving Facility and/or Term Loan to $600.0 million in the aggregate. The Restated Credit Agreement incurs interest and fees at various rates based on our total indebtedness to total asset value ratio at the end of each quarterly reporting period. The Revolving Facility permits borrowings at an interest rate equal to the sum of a base rate plus a margin of 0.50% to 1.30% or a LIBOR rate plus a margin of 1.50% to 2.30%. The annual commitment fee on the undrawn funds under the Revolving Facility is 0.15% to 0.25%. The Term Loan bears interest at a rate equal to the sum of a base rate plus a margin of 0.45% to 1.25% or a LIBOR rate plus a margin of 1.45% to 2.25%. The Term Loan does not provide for scheduled reductions in the principal balance prior to its maturity. We use borrowings under the Restated Credit Agreement to finance acquisitions and for general corporate purposes. Borrowings outstanding at variable interest rates under the Restated Credit Agreement as of September 30, 2018, were $100.0 million.

Based on our outstanding borrowings under the Restated Credit Agreement of $100.0 million as of September 30, 2018, an increase in market interest rates of 1.0% for 2018 would decrease our 2018 net income and cash flows by $0.3 million. This amount was determined by calculating the effect of a hypothetical interest rate change on our borrowings floating at market rates, and assumes that the $100.0 million outstanding borrowings under the Restated Credit Agreement is indicative of our future average floating interest rate borrowings for 2018 before considering additional borrowings required for future acquisitions or repayment of outstanding borrowings from proceeds of future equity offerings. The calculation also assumes that there are no other changes in our financial structure or the terms of our borrowings. Our exposure to fluctuations in interest rates will increase or decrease in the future with increases or decreases in the outstanding amount under our Restated Credit Agreement and with increases or decreases in amounts outstanding under borrowing agreements entered into with interest rates floating at market rates.

In order to minimize our exposure to credit risk associated with financial instruments, we place our temporary cash investments, if any, with high credit quality institutions. Temporary cash investments, if any, are currently held in an overnight bank time deposit with JPMorgan Chase Bank, N.A. and these balances, at times, may exceed federally insurable limits.

ITEM 4. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports filed or furnished pursuant to the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Commission's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by Rules 13a-15(b) and 13d-15(b) of the Exchange Act, we have carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures (as defined in Rules 13a-15 (e) and 15d-15(e) under the Exchange Act) were effective as of September 30, 2018, at the reasonable assurance level.

Internal Control Over Financial Reporting

During the third quarter of 2018, there were no changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Please refer to "Item 3. Legal Proceedings" in our Annual Report on Form 10-K for the year ended December 31, 2017, and to Note 4 in "Part I, Item 1. Financial Statements" in this Quarterly Report on Form 10-Q, for information regarding material pending legal proceedings. There have been no new material legal proceedings and no material developments in any of our previously disclosed legal proceedings reported in our Annual Report on Form 10-K for the year ended December 31, 2017, or in our Quarterly Report on Form 10-Q for the period ended June 30, 2018.

ITEM 1A. RISK FACTORS

There have not been any material changes to the information previously disclosed in "Item 1A. Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2017.

ITEM 5. OTHER INFORMATION

On October 24, 2018, our Board of Directors, acting upon the recommendation of its Nominating/Corporate Governance Committee, approved a form of indemnification agreement for our directors (the "Form Indemnification Agreement"). The Form Indemnification Agreement requires us, to the maximum extent permitted by Maryland law and subject to certain limitations, to indemnify the director party to the agreement against certain expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred in connection with the defense or settlement of any action, suit, claim, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding to which such director becomes subject by reason of such director's status as a current or former director of our Company. The Form Indemnification Agreement provides for indemnification rights for both third-party claims and proceedings brought by or on behalf of our Company. In addition, the Form Indemnification Agreement requires us to advance expenses incurred by such director in connection with any proceeding covered by the Form Indemnification Agreement. The Form Indemnification Agreement also establishes certain procedures and presumptions that apply in determining whether such director is entitled to indemnification thereunder.

The foregoing description of the Form Indemnification Agreement does not purport to be complete and is subject to, and qualified in its entirety by reference to, the full text of the Form Indemnification Agreement, a copy of which is attached hereto as Exhibit 10.1 and incorporated herein by reference.

On October 24, 2018, we entered into an indemnification agreement, in substantially the form of the Form Indemnification Agreement, with each of our directors. We also expect to enter into substantially similar Form Indemnification Agreements with any new directors.

ITEM 6. EXHIBITS

Exhibit Number	Description of Document	Location of Document
10.1*	Form of Indemnification Agreement between the Company and its directors.	Filed herewith.
31.1	Certification of Christopher J. Constant, President and Chief Executive Officer, pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as amended.	Filed herewith.
31.2	Certification of Danion Fielding, Vice President, Chief Financial Officer and Treasurer, pursuant to Rule 13a-14 (a) under the Securities Exchange Act of 1934, as amended.	Filed herewith.
32.1	Certification of Christopher J. Constant, President and Chief Executive Officer, pursuant to Rule 13a-14(b) under the Securities Exchange Act of 1934, as amended, and 18 U.S.C. § 1350.	Filed herewith.
32.2	Certification of Danion Fielding, Vice President, Chief Financial Officer and Treasurer, pursuant to Rule 13a-14 (b) under the Securities Exchange Act of 1934, as amended, and 18 U.S.C. § 1350.	Filed herewith.
101.INS	XBRL Instance Document.	Filed herewith.
101.SCH	XBRL Taxonomy Extension Schema.	Filed herewith.
101.CAL	XBRL Taxonomy Extension Calculation Linkbase.	Filed herewith.
101.DEF	XBRL Taxonomy Extension Definition Linkbase.	Filed herewith.
101.LAB	XBRL Taxonomy Extension Label Linkbase.	Filed herewith.
101.PRE	XBRL Taxonomy Extension Presentation Linkbase.	Filed herewith.

* Management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: October 25, 2018

Getty Realty Corp.

By: /s/ CHRISTOPHER J. CONSTANT

Christopher J. Constant
President and Chief Executive Officer
(Principal Executive Officer)

By: /s/ DANION FIELDING

Danion Fielding
Vice President, Chief Financial Officer and Treasurer
(Principal Financial Officer)

By: /s/ EUGENE SHNAYDERMAN

Eugene Shnayderman
Chief Accounting Officer and Controller
(Principal Accounting Officer)

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Section 2: EX-10.1 (EX-10.1 INDEMNIFICATION AGREEMENT)

Exhibit 10.1

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "***Agreement***"), dated as of _____ ___, 20__, is made by and between Getty Realty Corp., a Maryland corporation (the "***Company***"), and _____ ("***Director***"), a director of the Company.

RECITALS

WHEREAS, the Company desires to attract and retain talented and experienced individuals to serve as directors of the Company and wishes to indemnify such individuals to the fullest extent permitted by Maryland law;

WHEREAS, the Bylaws of the Company (the "***Bylaws***") require the Company to indemnify to the maximum extent permitted by Maryland law each director and officer of the Company;

WHEREAS, Section 2-418 of the Maryland General Corporation Law (the "***MGCL***") empowers the Company to indemnify its directors and expressly provides that the indemnification provisions set forth therein are not exclusive; and

WHEREAS, in order to induce Director to serve or continue to serve as a director of the Company, free from undue concern for claims for damages arising out of or related to such service to the Company, the Company has determined and agreed to enter into this Agreement with Director.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, and Director's agreement to serve or continue to serve as a director of the Company, Director and the Company hereby agree as follows:

1. Services. Director will serve or continue to serve as a director of the Company for so long as Director is duly elected or appointed or until Director tenders [his][her] resignation.

2. General. The Company shall indemnify, and advance Expenses to, Director (a) as provided in this Agreement and (b) otherwise to the maximum extent permitted by Maryland law in effect on the date hereof and as amended from time to time; *provided, however*, that no change in Maryland law shall have the effect of reducing the benefits available to Director hereunder based on Maryland law as in effect on the date hereof. The rights of Director provided in this Section 2 shall include, without limitation, the rights set forth in the other sections of this Agreement, including any additional indemnification permitted by the MGCL, including, without limitation, Section 2-418 thereof.

3. Standard for Indemnification. If, by reason of Directors' status as a current or former director of the Company, Director is, or is threatened to be, made a party to any Proceeding, the Company shall indemnify Director against all judgments, penalties, fines and amounts paid in settlement and all Expenses actually and reasonably incurred by Director or on Director's behalf in connection with any such Proceeding unless it is established that (a) the act or omission of

Director was material to the matter giving rise to the Proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) Director actually received an improper personal benefit in money, property or services or (c) in the case of any criminal Proceeding, Director had reasonable cause to believe that Director's conduct was unlawful.

4. Certain Limits on Indemnification. Except as set forth in Section 5 below, Director shall not be entitled to:

(a) indemnification hereunder if the Proceeding was one by or in the right of the Company and Director is adjudged, in a final adjudication of the Proceeding not subject to further appeal, to be liable to the Company;

(b) indemnification hereunder if Director is adjudged, in a final adjudication of the Proceeding not subject to further appeal, to be liable on the basis that personal benefit was improperly received in any Proceeding charging improper personal benefit to Director, whether or not involving action in Director's official capacity;

(c) indemnification or advancement of Expenses hereunder if the Proceeding was brought by Director, unless: (i) the Proceeding was brought to enforce indemnification under this Agreement, and then only to the extent in accordance with and as authorized by Section 8 of this Agreement, or (ii) the Company's Charter or the Bylaws, a resolution of the stockholders entitled to vote generally in the election of directors or of the Board of Directors of the Company (the "***Board***") or an agreement approved by the Board to which the Company is a party expressly provide otherwise; or

(d) indemnification or advancement of Expenses hereunder with respect to Proceedings or claims arising from the purchase and sale (or sale and purchase) by Director of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), or similar provisions of state statutory law or common law.

5. Court-Ordered Indemnification. A court of appropriate jurisdiction, upon application of Director and such notice as the court shall require, may order indemnification of Director by the Company in the following circumstances:

(a) if such court determines that Director is entitled to reimbursement under Section 2-418(d)(1) of the MGCL, the court shall order indemnification, in which case Director shall be entitled to recover the Expenses of securing such reimbursement; or

(b) if such court determines that Director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not Director (i) has met the standards of conduct set forth in Section 2-418(b) of the MGCL or (ii) has been adjudged liable for receipt of an improper personal benefit under Section 2-418(c) of the MGCL, the court may order such indemnification as the court shall deem proper without regard to any limitation on such court-ordered indemnification contemplated by Section 2-418(d)(2)(ii) of the MGCL.

6. Indemnification for Expenses.

(a) Successful Defense. To the extent that Director has been successful, on the merits or otherwise, in defense of any Proceeding (including, without limitation, an action by or in the right of the Company) in which Director was a party by reason of the fact that Director is or was a director of the Company, the Company shall indemnify Director against all Expenses actually and reasonably incurred by or on behalf of Director in connection with the investigation, defense or appeal of such Proceeding.

(b) Partially Successful Defense. To the extent that Director is a party to or a participant in any Proceeding (including, without limitation, an action by or in the right of the Company) by reason of the fact that Director is or was a director of the Company and is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Director against all Expenses actually and reasonably incurred by or on behalf of Director in connection with each successfully resolved claim, issue or matter. In the allocation of Expenses among claims, the presumption shall be that Expenses were attributable to the claims on which Director was successful, except for Expenses that the Company can show were clearly and primarily attributable to the claims on which Director was not successful.

(c) Dismissal. For purposes of this section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

7. Advancement of Expenses. If, by reason of the fact that Director is or was serving as a director of the Company, Director is, or is threatened to be, made a party to any Proceeding, the Company shall, without requiring a preliminary determination of Director's ultimate entitlement to indemnification hereunder, advance all Expenses incurred by or on behalf of Director in connection with such Proceeding. The Company shall make such advance within ten (10) business days after the receipt by the Company of a statement or statements requesting such advance, whether prior to or after the final disposition of such Proceeding, in the form of, in the reasonable discretion of Director (but without duplication), (a) payment of such Expenses directly to third parties on behalf of Director, (b) advancement of funds to Director in an amount sufficient to pay such Expenses or (c) reimbursement to Director for Director's payment of such Expenses. Such statement or statements shall reasonably evidence the Expenses incurred by Director and shall include or be preceded or accompanied by a written affirmation by Director and a written undertaking by or on behalf of Director, in substantially the form attached hereto as Exhibit A or in such form as may be required under applicable law as in effect at the time of the execution thereof. To the extent that Expenses advanced to Director do not relate to a specific claim, issue or matter in the Proceeding, such Expenses shall be allocated on a reasonable and proportionate basis. The undertaking required by this Section 7 shall be an unlimited general obligation by or on behalf of Director and shall be accepted without reference to Director's financial ability to repay such advanced Expenses and without any requirement to post security therefor.

8. Procedure for Determination for Entitlement to Indemnification.

(a) To obtain indemnification under this Agreement, Director shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Director and is reasonably necessary to determine whether and to what extent Director is entitled to indemnification. Director may submit one or more such requests from time to time and at such time(s) as Director deems appropriate in Director's sole discretion. The officer of the Company receiving any such request from Director shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that Director has requested indemnification.

(b) Upon written request by Director for indemnification pursuant to Section 8(a) above, a determination, if required by applicable law, with respect to Director's entitlement thereto shall promptly be made in the specific case:

(i) if a Change in Control has occurred, by Independent Counsel, in a written opinion to the Board, a copy of which shall be delivered to Director, which Independent Counsel shall be selected by Director and approved by the Board in accordance with Section 2-418(e)(2)(ii) of the MGCL, which approval shall not be unreasonably withheld; or

(ii) if a Change in Control has not occurred,

(A) by a majority vote of the Disinterested Directors or, if the Disinterested Directors constitute less than a quorum, by a majority vote of a committee of one or more Disinterested Directors designated by a majority vote of the Board (which may include Disinterested Directors and directors who are parties to the Proceeding) to make the determination;

(B) if Independent Counsel has been selected by the Board in accordance with Section 2-418(e)(2)(ii) of the MGCL and approved by Director, which approval shall not be unreasonably withheld or delayed, by Independent Counsel, in a written opinion to the Board, a copy of which shall be delivered to Director; or

(C) if so directed by the Board, by the stockholders of the Company.

(c) If it is determined that Director is entitled to indemnification, the Company shall make payment to Director within ten (10) business days after such determination.

(d) Director shall cooperate with the person, persons or entity making such determination with respect to Director's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Director and reasonably necessary or appropriate to such determination in the discretion of the Board or Independent Counsel if retained pursuant to clause (ii)(B) of Section 8(b) of this Agreement. Any Expenses incurred by Director in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Director's entitlement to indemnification) and the Company shall indemnify and hold Director harmless therefrom.

(e) The Company shall pay the reasonable fees and expenses of Independent Counsel, if one is appointed.

9. Presumptions and Effect of Certain Proceedings.

(a) In making any determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Director is entitled to indemnification under this Agreement if Director has submitted a request for indemnification in accordance with Section 8(a) of this Agreement, and the Company shall have the burden of overcoming that presumption in connection with the making of any determination contrary to that presumption.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, upon a plea of *nolo contendere* or its equivalent, or entry of an order of probation prior to judgment, does not create a presumption that Director did not meet the requisite standard of conduct described herein for indemnification.

(c) If the person, persons or entity empowered or selected under Section 8 of this Agreement to determine whether Director is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Director shall be entitled to such indemnification absent (i) a misstatement by Director of a material fact, or an omission of a material fact necessary to make Director's statement not materially misleading, in connection with the request for indemnification, or (ii) a final judicial determination that any or all such indemnification is expressly prohibited under applicable law; *provided*, *however*, that such 30-day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating of documentation and/or information relating thereto.

(d) The knowledge and/or actions, or failure to act, of any other director, officer, employee or agent of the Company or any other director, trustee, officer, partner, manager, managing member, fiduciary, employee or agent of any other foreign or domestic corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise shall not be imputed to Director for purposes of determining any other right to indemnification under this Agreement.

10. Remedies of Director.

(a) If (i) a determination is made pursuant to Section 8(b) of this Agreement that Director is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 7 or Section 11 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 8(b) of this Agreement within thirty (30) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 6 or Section 11 of this Agreement within ten (10) business days after receipt by the Company of a written request therefor, or (v) payment of indemnification pursuant to any other section of this Agreement or the Company's

Charter or the Bylaws is not made within ten (10) business days after a determination has been made that Director is entitled to indemnification, then Director shall be entitled to an adjudication in an appropriate court located in the State of Maryland, or in any other court of competent jurisdiction, or in an arbitration conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association, of Director's entitlement to indemnification or advancement of Expenses. Director shall commence a proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Director first has the right to commence such proceeding pursuant to this Section 10(a); *provided*, *however*, that the foregoing clause shall not apply to a proceeding brought by Director to enforce Director's rights under Section 6 of this Agreement. Except as set forth herein, the provisions of Maryland law (without regard to its conflicts of laws rules) shall apply to any such arbitration. The Company shall not oppose Director's right to seek any such adjudication or award in arbitration.

(b) In any judicial proceeding or arbitration commenced pursuant to this Section 10, Director shall be presumed to be entitled to indemnification or advancement of Expenses, as the case may be, under this Agreement and the Company shall have the burden of proving that Director is not entitled to indemnification or advancement of Expenses, as the case may be. If Director commences a judicial proceeding or arbitration pursuant to this Section 10, Director shall not be required to reimburse the Company for any advances pursuant to Section 7 of this Agreement until a final determination is made with respect to Director's entitlement to indemnification (as to which all rights of appeal have been exhausted or lapsed). The Company shall, to the fullest extent not prohibited by law, be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 10 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all of the provisions of this Agreement.

(c) If a determination shall have been made pursuant to Section 8(b) of this Agreement that Director is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 10, absent a misstatement by Director of a material fact, or an omission of a material fact necessary to make Director's statement not materially misleading, in connection with the request for indemnification that was not disclosed in connection with the determination.

(d) In the event that Director is successful in seeking, pursuant to this Section 10, a judicial adjudication of or an award in arbitration to enforce Director's rights under, or to recover damages for breach of, this Agreement, Director shall be entitled to recover from the Company, and shall be indemnified by the Company for, any and all Expenses actually and reasonably incurred by Director in such judicial adjudication or arbitration. If it shall be determined in such judicial adjudication or arbitration that Director is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by Director in connection with such judicial adjudication or arbitration shall be appropriately prorated.

(e) Interest shall be paid by the Company to Director at the maximum rate allowed to be charged for judgments under the Courts and Judicial Proceedings Article of the Annotated Code of Maryland for amounts which the Company pays or is obligated to pay for the period (i) commencing with either the tenth (10^{th}) business day after the date on which the Company was requested to advance Expenses in accordance with Sections 7 or 11 of this Agreement or the

thirtieth (30th) day after the date on which the Company was requested to make the determination of entitlement to indemnification under Section 8(b) of this Agreement, as applicable, and (ii) ending on the date on which such payment is made to Director by the Company.

11. Indemnification for Expenses of a Witness. Notwithstanding and in addition to any other provision of this Agreement, to the extent that Director is, by reason of the fact that Director is or was a director of the Company, a witness in or otherwise incurs Expenses in connection with any Proceeding to which Director is not a party, the Company hereby covenants and agrees to indemnify and hold harmless Director against all Expenses actually and reasonably incurred by [him][her] or on [his][her] behalf in connection therewith.

12. Reports to Stockholders. To the extent required by the MGCL, the Company shall report in writing to its stockholders the payment of any amounts for indemnification of, or advancement of Expenses to, Director under this Agreement arising out of a Proceeding by or in the right of the Company with the notice of the meeting of stockholders of the Company next following the date of the payment of any such indemnification or advancement of Expenses or prior to such meeting.

13. Certain Definitions.

(a) "Change in Control" means a change in control of the Company occurring after the date of this Agreement of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Exchange Act, whether or not the Company is then subject to such reporting requirement; *provided*, *however*, *that*, without limitation, such a Change in Control shall be deemed to have occurred if, after the date of this Agreement, any of the following occur:

(i) Acquisition of Stock by Third Party. Any "person" (as such term is used in Sections 3(a)(9), 13(d) and 14(d) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of the Company or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company, is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing 15% or more of the total voting power represented by the Company's then-outstanding Voting Securities, unless (A) the change in the relative "beneficial ownership" (as defined in Rule 13d-3 under the Exchange Act) of the Company's securities by any person results solely from a reduction in the aggregate number of outstanding shares of securities entitled to vote generally in the election of directors, or (B) such acquisition was approved in advance by at least two-thirds of the members of the Board in office immediately prior to such person's attaining such percentage interest and such acquisition would not constitute a Change in Control under part (iii) of this definition;

(ii) Change in Board. During any period of two consecutive years, individuals who at the beginning of such two-year period constitute the Board and any new director whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors at the beginning of such two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of the Board;

(iii) Corporate Transaction. The stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the Voting Securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into Voting Securities of the surviving entity) at least 80% of the total voting power represented by the Voting Securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or

(iv) Liquidation. The stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all the Company's assets.

(b) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification and/or advancement of Expenses is sought by Director.

(c) "Expenses" (i) means reasonable attorneys' fees and costs, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding (as defined below); and (ii) includes Expenses incurred in connection with any appeal resulting from any Proceeding (as defined below), including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent; *provided*, *however*, that Expenses excludes amounts paid in settlement by Director or the amount of judgments or fines against Director.

(d) "Independent Counsel" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither is, nor in the past five years has been, retained to represent: (i) the Company or Director in any matter material to either such party (other than with respect to matters concerning Director under this Agreement or of other indemnitees under similar indemnification agreements) or (ii) any other party to or participant or witness in the Proceeding (as defined below) giving rise to a claim for indemnification or advancement of Expenses hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Director in an action to determine Director's rights under this Agreement.

(e) "Proceeding" means any threatened, pending or completed action, suit, claim arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether of a civil (including intentional or unintentional tort claims), criminal, administrative or investigative (formal or informal) nature, including any appeal therefrom, except one pending or completed on or before the date of this Agreement, unless otherwise specifically agreed in writing by the Company and Director. If Director reasonably believes that a given situation may lead to or culminate in the institution of a Proceeding, such situation shall also be considered a Proceeding.

(f) "Voting Securities" are any securities of the Company which vote generally in the election of directors.

14. Non-Exclusivity; Insurance; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Director may at any time be entitled under applicable law, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Director under this Agreement in respect of any action taken or omitted by Director acting in [his][her] capacity as a director of the Company prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Bylaws or this Agreement, it is the intent of the parties hereto that Director shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent or subsequent assertion or employment of any other right or remedy.

(b) Section 2-418(k) of the MGCL permits the Company to purchase and maintain insurance or furnish similar protection or make other arrangements including, but not limited to, providing a trust fund, letter of credit, or surety bond ("***Indemnification Arrangements***") on behalf of Director against any liability asserted against [him][her] or incurred by or on behalf of [him][her] or in such capacity as director of the Company, or arising out of [his][her] status as such, whether or not the Company would have the power to indemnify [him][her] against such liability under the provisions of this Agreement or under the MGCL, as it may then be in effect. The purchase, establishment, and maintenance of any such Indemnification Arrangement shall not in any way limit or affect the rights and obligations of the Company or of Director under this Agreement except as expressly provided herein, and the execution and delivery of this Agreement by the Company and Director shall not in any way limit or affect the rights and obligations of the Company or the other party or parties thereto under any such Indemnification Arrangement.

(c) To the extent that the Company maintains an insurance policy or policies providing liability insurance for any directors or officers of the Company, Director shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director or officer under such policy or policies. If, at the time that the Company receives notice from any source of a Proceeding as to which Director is a party or a participant (as a witness or otherwise) and the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Director, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(d) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Director, who shall

execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

15. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any claim made against Director to the extent Director has otherwise actually received payment (under any insurance policy, the Bylaws or otherwise) of the amounts otherwise indemnifiable hereunder.

16. Duration of Agreement; Binding Effect.

(a) All obligations of the Company under this Agreement shall apply retroactively beginning on the date on which Director commenced as, and shall continue during the period in which Director remains, a director of the Company and shall continue thereafter for so long as Director shall be subject to any possible claim or Proceeding by reason of the fact that Director was serving in the capacity referred to herein. Director's rights hereunder shall continue after Director has ceased acting as a director of the Company and shall inure to the benefit of [his][her] heirs, executors and administrators.

(b) All of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

17. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Director to the fullest extent permitted by law, including those circumstances in which indemnification would otherwise be discretionary.

18. Entire Agreement. This Agreement and the documents expressly referred to herein constitute the entire agreement between the parties hereto with respect to the matters covered hereby, and any other prior or contemporaneous oral or written understandings or agreements with respect to the matters covered hereby (including without limitation any prior indemnification agreement between Director and the Company or its predecessors) are expressly superseded by this Agreement.

19. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby, and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves

invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 15 hereof.

20. Modification and Waiver. No supplement, modification or amendment of this Agreement shall be binding unless executing in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall any such waiver constitute a continuing waiver.

21. Notice. All notices, requests, demands and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given (a) upon delivery if delivered by hand to the party to whom such notice or other communication shall have been directed, (b) if mailed by certified or registered mail with postage prepaid, return receipt requested, on the third business day after the date on which it is so mailed, (c) one business day after the business day of deposit with a nationally recognized overnight delivery service, specifying next day delivery, with written verification of receipt, or (d) on the same day as delivered by email if delivered during business hours or on the next successive business day if delivered by email after business hours. Addresses for notice to either party shall be as shown on the signature page of this Agreement, or to such other address as may have been furnished by either party in the manner set forth above.

22. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Maryland applicable to contracts made and to be performed in such state without giving effect to the principles of conflicts of laws.

23. Identical Counterparts. This Agreement may be executed in one or more counterparts (delivery of which may be by facsimile, or via e-mail as a portable document format (.pdf) or other electronic format), each of which will be deemed to be an original, and it will not be necessary in making proof of this Agreement or the terms of this Agreement to produce or account for more than one such counterpart. One such counterpart signed by the party against whom enforceability is sought shall be sufficient to evidence the existence of this Agreement.

24. Headings. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

COMPANY:

GETTY REALTY CORP.

By: _____
Name:
Title:

DIRECTOR:

_____

Name:

Address:

[Signature Page to Indemnification Agreement]

Exhibit A

AFFIRMATION AND UNDERTAKING TO REPAY EXPENSES ADVANCED

To: The Board of Directors of Getty Realty Corp.

Re: Affirmation and Undertaking

Ladies and Gentlemen:

This Affirmation and Undertaking is being provided pursuant to that certain Indemnification Agreement dated the _____ day of _____, 20__, by and between Getty Realty Corp., a Maryland corporation (the "***Company***"), and the undersigned Director (the "***Indemnification Agreement***"), pursuant to which I am entitled to advancement of Expenses in connection with **[Description of Proceeding]** (the "***Proceeding***").

Terms used herein and not otherwise defined shall have the meanings specified in the Indemnification Agreement.

I am subject to the Proceeding by reason of my status as a [current][former] director of the Company or by reason of alleged actions or omissions by me in such capacity. I hereby affirm my good faith belief that at all times, insofar as I was involved as a director of the Company, in any of the facts or events giving rise to the Proceeding, I (i) did not act with bad faith or active or deliberate dishonesty, (ii) did not receive any improper personal benefit in money, property or services and (iii) in the case of any criminal proceeding, had no reasonable cause to believe that any act or omission by me was unlawful.

In consideration of the advance by the Company for Expenses incurred by me in connection with the Proceeding (the "***Advanced Expenses***"), I hereby agree that if, in connection with the Proceeding, it is established that (i) an act or omission by me 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, or (ii) I actually received an improper personal benefit in money, property or services or (iii) in the case of any criminal proceeding, I had reasonable cause to believe that the act or omission was unlawful, then I shall promptly reimburse the portion of the Advanced Expenses relating to the claims, issues or matters in the Proceeding as to which the foregoing findings have been established.

IN WITNESS WHEREOF, I have executed this Affirmation and Undertaking on this ___ day of _____, 20____.

_____

Name:

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Section 3: EX-31.1 (EX-31.1)

Exhibit 31.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Christopher J. Constant, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Getty Realty Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this

report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 25, 2018

By: /s/ CHRISTOPHER J. CONSTANT
Christopher J. Constant
President and Chief Executive Officer

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Section 4: EX-31.2 (EX-31.2)

Exhibit 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, Danion Fielding, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Getty Realty Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes in accordance with generally accepted accounting principles;

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 25, 2018

By: /s/ DANION FIELDING
Danion Fielding
Vice President, Chief Financial Officer and Treasurer

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Section 5: EX-32.1 (EX-32.1)

Exhibit 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

Pursuant to 18 U.S.C. § 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Getty Realty Corp. (the "Company") hereby certifies, to such officer's knowledge, that:

i. the Quarterly Report on Form 10-Q of the Company for the period ended September 30, 2018, (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 25, 2018

By: /s/ CHRISTOPHER J. CONSTANT
Christopher J. Constant
President and Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to Getty Realty Corp. and will be retained by Getty Realty Corp. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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Section 6: EX-32.2 (EX-32.2)

Exhibit 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

Pursuant to 18 U.S.C. § 1350, as adopted by Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned officer of Getty Realty Corp. (the "Company") hereby certifies, to such officer's knowledge, that:

i. the Quarterly Report on Form 10-Q of the Company for the period ended September 30, 2018, (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

ii. the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 25, 2018

By: /s/ DANION FIELDING
Danion Fielding
Vice President, Chief Financial Officer and Treasurer

A signed original of this written statement required by Section 906 has been provided to Getty Realty Corp. and will be retained by Getty Realty Corp. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

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