

GETTY REALTY CORP /MD/  
Form 10-K  
March 18, 2013  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

**FORM 10-K**

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

**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2012**

**OR**

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

**COMMISSION FILE NUMBER 001-13777**

**GETTY REALTY CORP.**

(Exact name of registrant as specified in its charter)

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**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**11-3412575**  
(I.R.S. employer  
identification no.)

**125 Jericho Turnpike, Suite 103, Jericho, New York**  
(Address of principal executive offices)

**11753**  
(Zip Code)

**Registrant's telephone number, including area code: (516) 478-5400**

**Securities registered pursuant to Section 12(b) of the Act:**

| <b>TITLE OF EACH CLASS</b>            | <b>NAME OF EACH EXCHANGE ON WHICH REGISTERED</b> |
|---------------------------------------|--|
| <b>Common Stock, \$0.01 par value</b> | <b>New York Stock Exchange</b>                   |

**Securities registered pursuant to Section 12(g) of the Act:**

**None**

(Title of Class)

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes  No

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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

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

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The aggregate market value of common stock held by non-affiliates (25,649,418 shares of common stock) of the Company was \$491,186,000 as of June 30, 2012.

The registrant had outstanding 33,396,790 shares of common stock as of March 18, 2013.

### DOCUMENTS INCORPORATED BY REFERENCE

#### DOCUMENT

Selected Portions of Definitive Proxy Statement for the 2013 Annual Meeting of Stockholders (the Proxy Statement ), which will be filed by the registrant on or prior to 120 days following the end of the registrant's year ended December 31, 2012 pursuant to Regulation 14A.

#### PART OF FORM 10-K

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### **Cautionary Note Regarding Forward-Looking Statements**

Certain statements in this Annual Report on Form 10-K may constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. When we use the words believes, expects, plans, projects, estimates, anticipates, predicts and similar expressions, we intend to identify forward-looking statements. (All capitalized and undefined terms used in this section shall have the same meanings hereafter defined below in this Annual Report on Form 10-K.)

Examples of forward-looking statements included in this Annual Report on Form 10-K include, but are not limited to, statements regarding: Marketing and our efforts, expectations, and ability to reposition the properties that were previously subject to the Master Lease; our expectations that we may receive funds from the liquidation of the Marketing Estate to satisfy our claims against the Marketing Estate; our expectations that we may collect amounts we advance under the Litigation Funding Agreement; our beliefs regarding the amount of revenue we expect to realize from our properties; our expectations regarding incurring costs associated with repositioning of our properties; our expectations regarding incurring costs associated with the Marketing bankruptcy proceeding and the process of taking control of our properties, including, but not limited to, the Property Expenditures and the Capital Improvements; our expectations regarding eviction proceedings initiated to take control of our properties; the impact of the developments related to repositioning of our properties on our business and ability to pay dividends or our stock price; the reasonableness of and assumptions used regarding our accounting estimates, judgments, assumptions and beliefs; our exposure and liability due to and our estimates and assumptions regarding our environmental liabilities and remediation costs, including the Marketing Environmental Liabilities and other environmental remediation costs; our belief that our accruals for environmental and litigation matters were appropriate based on the information then available; compliance with federal, state and local provisions enacted or adopted pertaining to environmental matters; the probable outcome of litigation or regulatory actions and their impact on us; our expected recoveries from underground storage tank funds; our expectations regarding our indemnification obligations and others; future acquisitions and financing opportunities and their impact on our financial performance; the adequacy of our current and anticipated cash flows from operations, borrowings under our Credit Agreement (as defined below) and available cash and cash equivalents; our expectation as to our continued compliance with the financial covenants in our Credit Agreement and Prudential Loan Agreement; and our ability to maintain our federal tax status as a real estate investment trust.

These forward-looking statements are based on our current beliefs and assumptions and information currently available to us, and involve known and unknown risks (including the risks described below in Item 1A. Risk Factors and in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations herein, and other risks that we describe from time to time in this and our other filings with the Securities and Exchange Commission (the SEC)), uncertainties and other factors which may cause our actual results, performance and achievements to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements.

These risks include, but are not limited to risks associated with: repositioning our properties that were previously subject to the Master Lease and the adverse impact such repositioning may have on our cash flows and ability to pay dividends; our estimates and assumptions regarding expenses, claims and accruals relating to pre-petition and post-petition claims against Marketing, the process of taking control of our properties, including the likelihood of our success in the eviction proceedings we have commenced, and repositioning such properties; the liquidation of the Marketing Estate and risks associated with prosecuting the Lukoil Complaint, including our obligations under the Litigation Funding Agreement; the performance of our tenants of their lease obligations, renewal of existing leases and re-letting or selling our vacant properties; our ability to obtain favorable terms on any properties that we sell or re-let; the uncertainty of our estimates, judgments and assumptions associated with our accounting policies and methods; our dependence on external sources of capital; our business operations generating sufficient cash for distributions or debt service; potential future acquisitions; our ability to acquire new properties; owning and leasing real estate generally; substantially all of our tenants depending on the same industry for their revenues; property taxes; costs of completing environmental remediation and of compliance with environmental legislation and regulations; potential exposure related to pending lawsuits and claims; owning real estate primarily concentrated in the Northeast and Mid-Atlantic regions of the United States; counterparty risk; expenses not covered by insurance; the impact of our electing to be treated as a REIT under the federal income tax laws, including subsequent failure to qualify as a REIT; changes in interest rates and our ability to manage or mitigate this risk effectively; our dividend policy and ability to pay dividends; dilution as a result of future issuances of equity securities; changes in market conditions; Maryland law discouraging a third-party takeover; adverse effect of inflation; the loss of a member or members of our management team; changes in accounting standards that may adversely affect our financial position; and terrorist attacks and other acts of violence and war.

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 Annual Report on Form 10-K and those that are described from time to time in our other filings with the SEC.



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You should not place undue reliance on forward-looking statements, which reflect our view only as of the date hereof. We undertake no obligation to publicly release revisions to these forward-looking statements that reflect future events or circumstances or reflect the occurrence of unanticipated events.

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**PART I**

**Item 1. Business**

**Company Profile**

Getty Realty Corp., a Maryland corporation, is the leading publicly-traded real estate investment trust ( REIT ) in the United States specializing in the ownership, leasing and financing of retail motor fuel and convenience store properties and petroleum distribution terminals. Our properties are located in 21 states across the United States with concentrations in the Northeast and the Mid-Atlantic regions. Our properties are operated under a variety of brands including Getty, BP, Exxon, Mobil, Shell, Chevron, Valero and Aloha. We own the Getty® trademark and trade name in connection with our real estate and the petroleum marketing business in the United States.

We are self-administered and self-managed by our management team, which has extensive experience in owning, leasing and managing retail motor fuel and convenience store properties. We have invested, and will continue to invest, in real estate and real estate related investments, such as mortgage loans, when appropriate opportunities arise.

**The History of Our Company**

Our founders started the business in 1955 with the ownership of one gasoline service station in New York City and combined real estate ownership, leasing and management with service station operation and petroleum distribution. We held our initial public offering in 1971 under the name Power Test Corp. We acquired, from Texaco in 1985, the petroleum distribution and marketing assets of Getty Oil Company in the Northeast United States along with the Getty® name and trademark in connection with our real estate and the petroleum marketing business in the United States. We became one of the leading independent owner/operators of petroleum marketing assets in the country, serving retail and wholesale customers through a distribution and marketing network of Getty® and other branded retail motor fuel and convenience store properties and petroleum distribution terminals.

Getty Petroleum Marketing, Inc. ( Marketing ) was formed to facilitate the spin-off of our petroleum marketing business to our shareholders which was completed in 1997. Marketing was acquired by a U.S. subsidiary of OAO Lukoil ( Lukoil ) in December 2000. In connection with Lukoil s acquisition of Marketing, we renegotiated our long-term unitary triple-net lease (the Master Lease ) with Marketing. On December 5, 2011, Marketing filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court, Southern District of New York (the Bankruptcy Court ). Marketing rejected the Master Lease pursuant to an Order issued by the Bankruptcy Court, effective April 30, 2012 and possession of the then 788 properties subject to the Master Lease was returned to us.

As of December 31, 2012, more than 700 properties that we own or lease were previously leased to Marketing. During 2012, we entered into ten long-term triple-net unitary leases re-letting, in the aggregate, 443 operating properties previously leased to Marketing. The new leases generally have 15 year initial terms with provisions for renewal terms and annual rent escalations. We sold 54 properties for \$15.4 million in the aggregate during 2012. As of the date of this filing on Form 10-K, in 2013, we have sold an additional 42 properties for \$17.5 million in the aggregate, including one terminal. Certain of the properties previously leased to Marketing are subject to month-to-month licensing agreements and our temporary fuel supply agreement (described in more detail below). The balance of the remaining properties previously leased to Marketing are accounted for as held for sale and are either subject to month-to-month licensing agreements, or are vacant.

Since May 2003, we have acquired approximately 400 properties in various states in transactions valued at approximately \$523 million. These acquisitions include single property transactions and portfolio transactions ranging in size from 18 properties with an aggregate value of approximately \$13 million up to a portfolio comprised of 59 properties with an aggregate value of approximately \$111 million.

**Company Operations**

As of December 31, 2012, we owned 946 properties and leased 135 properties. Our typical property is used as a retail motor fuel outlet and convenience store, and is located on between one-half and three quarters of an acre of land in a metropolitan area. The properties that we have acquired since 2007 are generally located on larger parcels of land. We believe our network of retail motor fuel and convenience store properties and terminal properties across the Northeast and the Mid-Atlantic regions of the United States is unique and that comparable networks of properties are not readily available for purchase or lease from other owners or landlords. Many of our properties are located at highly trafficked urban intersections or conveniently close to highway entrance or exit ramps.

Our business model is to lease our properties on a triple-net basis primarily to petroleum distributors and to a lesser extent to individual operators. Our tenants operate our properties directly or sublet our properties to operators who operate their gas stations, convenience stores,



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automotive repair service facilities or other businesses at our properties. These tenants are responsible for the operations conducted at these 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.

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In addition, with respect to certain properties that we are repositioning, we have entered into month-to-month license agreements and interim fuel supply arrangements. We receive monthly occupancy payments directly from the licensee-operators while we remain responsible for certain costs associated with the properties. These month-to-month license agreements allow the licensees to occupy and use the properties as gas stations, convenience stores or automotive repair service facilities, and require the licensee-operators to sell fuel provided exclusively by a third party, with whom we have contracted for interim fuel supply. Under our agreement with the third party fuel supplier, the third party fuel supplier is required to pay us a fee based in part on gallons sold and we pay to the third party fuel supplier a monthly administrative service fee. Our month-to-month license agreements differ from our triple-net lease arrangements in that, among other things, we are responsible for the payment of certain environmental compliance costs and property operating expenses including maintenance and real estate taxes. We intend to reposition these properties in order to maximize their value to us taking into account each property's intermediate and long-term investment requirements and potential. As a result of this process, we expect that we may dispose of or lease these remaining properties, either individually or in small portfolios. We also may make investments in certain of these properties in anticipation of leasing them or by contribution to capital expenditures required to be made by our tenants. We cannot predict the timing or the terms of any future sales or leases.

Substantially all of our tenants' financial results depend on the sale of refined petroleum products and 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. In those instances where we determine that the best use for a property is no longer as a gas station, we will seek an alternative tenant or buyer for the property. As of December 31, 2012, approximately 20 of our properties are leased for uses such as quick serve restaurants, automobile sales and other retail purposes, excluding approximately 40 properties previously subject to the Master Lease with marketing which are currently held for sale and which have temporary occupancies. (For additional information regarding our real estate business and our properties, see Item 1. Business - Real Estate Business and Item 2. Properties.)

One of our tenants, CPD NY Energy Corp., a subsidiary of Chestnut Petroleum Dist. (together with its affiliates, CPD), represents 18% and 12% of our revenues from rental properties for 2012 and 2011, respectively. (For information regarding factors that could adversely affect us relating to our lessees, see Part II, Item 1A. Risk Factors.)

The sector of the real estate industry in which we operate is highly competitive. In addition, we expect major real estate investors with significant capital will continue to compete with us for attractive acquisition opportunities. These competitors include petroleum manufacturing, distributing and marketing companies, other REITs, public and private investment funds and other individual and institutional investors. Generally, we seek leases with our Tenants that have an initial term of 15 years and include provisions for rental increases during the term of the lease. As of December 31, 2012, our average lease term including month-to-month license agreements, weighted by the number of underlying properties, was in excess of 9.8 years excluding renewal options. Retail motor fuel properties are an integral component of the transportation infrastructure. Stability within the retail motor fuel and convenience store industry is driven by highly inelastic demand for petroleum products and day-to-day consumer goods and fast foods, which supports our tenants.

We elected to be treated as a REIT under the federal income tax laws beginning January 1, 2001. A REIT is a corporation, or a business trust that would otherwise be taxed as a corporation, which meets certain requirements of the Internal Revenue Code. The Internal Revenue Code permits a qualifying REIT to deduct dividends paid, thereby effectively eliminating corporate level federal income tax and making the REIT a pass-through vehicle for federal income tax purposes. To meet the applicable requirements of the Internal Revenue Code, a REIT must, among other things, invest substantially all of its assets in interests in real estate (including mortgages and other REITs) or cash and government securities, derive most of its income from rents from real property or interest on loans secured by mortgages on real property, and distribute to shareholders annually a substantial portion of its otherwise taxable income. As a REIT, we are required to distribute at least 90% of our taxable income to our shareholders each year and would be subject to corporate level federal income taxes on any taxable income that is not distributed.

### **Acquisition Strategy and Activity**

As part of our overall growth strategy, we regularly review acquisition and financing opportunities to acquire additional properties, and we expect to continue to pursue acquisitions that we believe will benefit our financial performance. Our investment strategy is aimed at achieving a high quality real estate portfolio and geographic diversification. We employ investment personnel to pursue acquisitions that are consistent with this strategy. A key element of our investment strategy is to acquire properties in strong primary markets that serve high density population centers.

We review such opportunities on an ongoing basis and may have one or more potential acquisitions under consideration at any point in time, which may be at varying stages of the negotiation and due diligence review process. To the extent that our current sources of liquidity are not sufficient to fund such acquisitions, we will require other sources of capital, which may or may not be available on favorable terms or at all.



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In 2012, we acquired fee or leasehold title to five gasoline station and convenience store properties in separate transactions valued at \$5.2 million. In 2011, we acquired fee or leasehold title to 125 gasoline station and convenience store properties in two separate transactions valued at \$198.6 million.

Since May 2003, we have acquired approximately 400 properties in various states in transactions valued at approximately \$523 million. These acquisitions include single property transactions and portfolio transactions ranging in size from 18 properties with an aggregate value of approximately \$13 million up to a portfolio comprised of 59 properties with an aggregate value of approximately \$111 million.

### **Trademarks**

We own the Getty® name and trademark in connection with our real estate and the petroleum marketing business in the United States and we permit certain of our tenants to use the Getty® trademarks at properties that they lease from us.

### **Regulation**

We are subject to numerous existing federal, state and local laws and regulations including matters related 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, underground storage tanks ( UST or USTs ) and other equipment. Petroleum properties are governed by numerous federal, state and local environmental laws and regulations. These laws have included: (i) requirements to report to governmental authorities discharges of petroleum products into the environment and, under certain circumstances, to remediate the soil and/or groundwater contamination pursuant to governmental order and directive, (ii) requirements to remove and replace USTs that have exceeded governmental-mandated age limitations, and (iii) the requirement to provide a certificate of financial responsibility with respect to claims relating to UST failures. Our tenants are directly responsible for compliance with various environmental laws and regulations as the operators of our properties.

We believe that we are in substantial compliance with federal, state and local provisions enacted or adopted pertaining to environmental matters. Although we are unable to predict what legislation or regulations may be adopted in the future with respect to environmental protection and waste disposal, existing legislation and regulations have had no material adverse effect on our competitive position. (For additional information with respect to pending environmental lawsuits and claims see Item 3. Legal Proceedings .)

Environmental expenses are principally attributable to remediation costs which include installing, operating, maintaining and decommissioning remediation systems, monitoring contamination, and governmental agency reporting incurred in connection with contaminated properties. We seek reimbursement from state UST remediation funds related to these environmental expenses where available. We enter into leases and various other agreements which allocate responsibility for known and unknown environmental liabilities by establishing the percentage and method of allocating responsibility between the parties. In accordance with leases with certain tenants, we have agreed to bring the leased properties with known environmental contamination to within applicable standards, and to either regulatory or contractual closure ( Closure ) in an efficient and economical manner. Generally, upon achieving Closure at each individual property, our environmental liability under the lease for that property will be satisfied and future remediation obligations will be the responsibility of our tenant.

Our tenants are directly responsible to pay for (i) remediation of environmental contamination they cause and compliance with various environmental laws and regulations as the operators of our properties, and (ii) environmental liabilities allocated to them under the terms of our leases and various other agreements. Generally, the liability for the retirement and decommissioning or removal of USTs and other equipment is the responsibility of our triple-net tenants. We are contingently liable for these obligations in the event that our tenants do not satisfy their responsibilities. A liability has not been accrued for obligations that are the responsibility of our tenants (other than Marketing s environmental obligations which we accrued in the fourth quarter of 2011). 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.

For additional information please refer to Item 1A. Risk Factors and to Liquidity and Capital Resources, Environmental Matters , Contractual Obligations in Management s Discussion and Analysis of Financial Condition and Results of Operations which appear in Item 7. and note 6 in Item 8. Financial Statements and Supplementary Data Notes to Consolidated Financial Statements. in this Annual Report on Form 10-K.

### **Personnel**

As of March 18, 2013, we had 37 employees.



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### **Access to our filings with the Securities and Exchange Commission and Corporate Governance Documents**

Our website address is [www.gettyrealty.com](http://www.gettyrealty.com). Our address, phone number and a list of our officers is available on our website. Our website contains a hyperlink to the EDGAR database of the Securities and Exchange Commission (the "SEC") at [www.sec.gov](http://www.sec.gov) where you can access, free-of-charge, our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and all amendments to these reports as soon as reasonably practicable after such reports are filed. Our website also contains our business conduct guidelines, corporate governance guidelines and the charters of the Compensation, Nominating/Corporate Governance and Audit Committees of our Board of Directors. We also will provide copies of these reports and corporate governance documents free-of-charge upon request, addressed to Getty Realty Corp., 125 Jericho Turnpike, Suite 103, Jericho, NY 11753, Attn: Investor Relations. Information available on or accessible through our website shall not be deemed to be a part of this Annual Report on Form 10-K. You may read and copy any materials that we file with the Securities and Exchange Commission at the Securities and Exchange Commission's Public Reference Room at 100 F Street, N.E., Washington, DC 20549. You may obtain information on the operation of the Public Reference Room by calling the Securities and Exchange Commission at 1-800-SEC-0330.

### **Item 1A. Risk Factors**

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

***We are repositioning our properties that were previously leased to Marketing. We expect to incur significant costs associated with repositioning these properties and we expect to generate less net revenue after leasing or selling these properties. The incurrence of these costs and receipt of less net revenue may materially negatively impact our cash flow and ability to pay dividends.***

We are in the process of repositioning the properties that were previously leased to Getty Petroleum Marketing Inc. ("Marketing") comprising a unitary premises pursuant to a master lease (the "Master Lease"). During 2012, we have entered into long-term triple-net leases with respect to 443 of these properties. In addition, we have entered into month-to-month license agreements and interim fuel supply arrangements with respect to our operating properties. The remaining properties previously leased to Marketing are accounted for as held for sale, and are either subject to month-to-month licensing agreements or are vacant. Our month-to-month license agreements allow the licensee to occupy and to use the properties for gas stations, convenience stores, automotive repair service facilities or other businesses. We receive monthly payments from the licensee-operators while remaining responsible for all operating expenses, including maintenance, repairs, real estate taxes, insurance and general upkeep ("Property Expenditures") and environmental costs. Dependent on factors related to each site, we expect to directly pay for varying types of costs over a period of years for deferred maintenance, required renovations, replacement of underground storage tanks and related equipment and zoning and permitting costs ("Capital Improvements"). It is possible we may enter into additional long-term triple-net leases for certain of these properties with tenants who are actively engaged in the business of retail petroleum marketing.

We, or our tenants, have commenced eviction proceedings involving approximately 40 properties in various jurisdictions against Marketing's former subtenants (or sub-subtenants) who have not vacated our properties and occupy our properties without rights. We are incurring significant costs, primarily legal expenses, in connection with such proceedings.

We are currently generating less net revenue from the leasing of these properties and we expect that following the completion of the repositioning process, we will continue to generate less net revenue from these properties than we previously received from Marketing. In addition, dependent on factors related to each site we expect to directly pay for Property Expenditures during the repositioning process and possibly thereafter and for Capital Improvements over a period of years.

It is possible that issues involved in re-letting or repositioning these properties may require significant management attention that would otherwise be devoted to our ongoing business. The incurrence of these costs and receipt of less net revenue from our properties that were subject to the Master Lease may materially negatively impact our cash flow and ability to pay dividends.

***Our future cash flow is dependent on the performance of our tenants of their lease obligations, renewal of existing leases and either re-letting or selling our vacant properties.***

We are subject to risks that financial distress, default or bankruptcy of our tenants may lead to vacancy at our properties or disruption in rent receipts as a result of partial payment or nonpayment of rent or that expiring leases may not be renewed. Under unfavorable general economic

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conditions, there can be no assurance that our tenants' level of sales and financial performance generally will not be adversely affected, which in turn, could impact the reliability of our rent receipts. We are subject to risks that the terms governing renewal or re-letting of our properties (including the cost of required renovations, replacement of underground storage tanks and related equipment or environmental remediation) may be less favorable than current lease terms (or prior lease terms in the case of vacant properties). We are also subject to the risk that we may receive less net proceeds from the properties we sell as

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compared to their current carrying value or that the value of our properties may be adversely affected by unfavorable general economic conditions. Unfavorable general economic conditions may also negatively impact our ability to re-let or sell our properties. Numerous properties compete with our properties in attracting tenants to lease space. The number of available or competitive properties in a particular area could have a material adverse effect on our ability to lease or sell our properties and on the rents we are able to charge. In addition to the risk of disruption in rent receipts, we are subject to the risk of incurring real estate taxes, maintenance, environmental and other expenses at vacant properties.

The financial distress, default or bankruptcy of our tenants may also lead to protracted and expensive processes for retaking control of our properties than would otherwise be the case, including, eviction or other legal proceedings related to or resulting from the tenant's default. These risks are greater with respect to certain of our tenants who lease multiple properties from us. If a tenant files for bankruptcy protection it is possible that we would recover substantially less than the full value of our claims against the tenant. If our tenants do not perform their lease obligations; or we are unable to renew existing leases and promptly recapture and re-let or sell vacant locations; or if lease terms upon renewal or re-letting are less favorable than current lease terms; or if the values of properties that we sell are adversely affected by market conditions; or if we incur significant costs or disruption related to or resulting from tenant financial distress, default or bankruptcy; then our cash flow could be significantly adversely affected.

***We are continuing our efforts to sell certain properties. We cannot predict the terms or timing of any such property dispositions. If we do not obtain favorable terms on such dispositions, our operations and financial performance may be negatively impacted.***

We are continuing our efforts to sell properties, including those properties which are accounted for as held for sale. While we have dedicated considerable effort designed to increase sales activity, we cannot predict if or when property dispositions will close and whether the terms of any such disposition will be favorable to us. It is likely that we will retain environmental liabilities that exist with respect to that property or group of properties prior to the date of sale, to the extent there is no third-party responsible therefor. If we do not obtain favorable terms on such dispositions, our operations and financial performance will be negatively impacted.

***We maintain significant pre-petition and post-petition claims against Marketing. We cannot provide any assurance that our claims will be accepted or paid***

As part of Marketing's bankruptcy proceeding, we maintain significant pre-petition and post-petition claims against Marketing. Certain of our claims are considered administrative claims and have priority over other claims. We have agreed to cap our aggregate priority administrative claims at the amount of \$10.5 million, together with interest from May 1, 2012 until paid at the rate provided in the Master Lease. As of the date of this filing on Form 10-K, the outstanding unpaid principal amount of our administration claim is \$7.4 million. We cannot predict how much of these unpaid obligations we will ultimately collect, if any.

***We have agreed to advance funds to the liquidating trustee of the Marketing Estate. We cannot give any assurance that we will be repaid any amounts of our loans or be reimbursed for our legal fees.***

The Bankruptcy Court has appointed a liquidating trustee to oversee the liquidation of the Marketing estate (the Marketing Estate). In December 2011, the Marketing Estate filed a lawsuit against Marketing's former parent, Lukoil Americas Corporation, and certain of its affiliates (collectively, Lukoil), as well as the former directors and officers of Marketing (the Lukoil Complaint). The Lukoil Complaint asserts, among other claims, that Marketing's sale of assets to Lukoil in November 2009 constituted a fraudulent conveyance, and that the assets or their value can be recovered from Lukoil. In addition, the Lukoil Complaint asserts that the former directors and officers violated their fiduciary duties to Marketing in approving and effectuating the challenged sale, and are liable for money damages. The Liquidating Trustee is pursuing these claims for the benefit of the Marketing Estate.

In October 2012, we entered into an agreement with the Marketing Estate to make loans and otherwise fund up to an aggregate amount of \$6.4 million to fund the prosecution of the Lukoil Complaint and certain expenses incurred by the Marketing Estate (the Litigation Funding Agreement). It is possible that we may agree to advance amounts in excess of \$6.4 million. We advanced \$1.7 million in the fourth quarter of 2012 and \$0.1 million in the first quarter of 2013 to the Marketing Estate pursuant to the Litigation Funding Agreement. The Litigation Funding Agreement also provides that we are entitled to be reimbursed for up to \$1.3 million of our legal fees in connection with the Litigation Funding Agreement. Based on the terms of the Litigation Funding Agreement, we have recorded a receivable of \$3.0 million as of December 31, 2012, which includes amounts advanced and amounts due for reimbursable legal fees we incurred in connection with the Litigation Funding Agreement. Payments that we receive pursuant to the Litigation Funding Agreement will not reduce our Administrative Claim or our other pre-petition and post-petition claims against Marketing. A portion of the payments we receive pursuant to the Litigation Funding Agreement may be subject to federal income taxes. We cannot provide any assurance that we will be repaid any amounts we advance pursuant to the Litigation Funding Agreement or the reimbursable legal fees we have incurred.



*Our accounting policies and methods are fundamental to how we record and report our financial position and results of operations, and they require management to make estimates, judgments and assumptions about matters that are inherently uncertain.*

Our accounting policies and methods are fundamental to how we record and report our financial position and results of operations. We have identified several accounting policies as being critical to the presentation of our financial position and results of

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operations because they require management to make particularly subjective or complex judgments about matters that are inherently uncertain and because of the likelihood that materially different amounts would be recorded under different conditions or using different assumptions. We cannot provide any assurance that we will not make subsequent significant adjustments to our consolidated financial statements. Estimates, judgments and assumptions underlying our consolidated financial statements include, but are not limited to, receivables and related reserves, deferred rent receivable, income under direct financing leases, asset retirement obligations including environmental remediation obligations, real estate, depreciation and amortization, impairment of long-lived assets, litigation, accrued liabilities, income taxes and allocation of the purchase price of properties acquired to the assets acquired and liabilities assumed.

If our accounting policies, methods, judgments, assumptions and allocations prove to be incorrect, or if circumstances change, our business, financial condition, revenues, operating expense, results of operations, liquidity, ability to pay dividends or stock price may be materially adversely affected.

***We are dependent on external sources of capital which may not be available on favorable terms, or at all.***

We are dependent on external sources of capital to maintain our status as a REIT and must distribute to our shareholders each year at least 90% of our net taxable income, excluding any net capital gain. Because of these distribution requirements, it is not likely that we will be able to fund all future capital needs, including acquisitions, from income from operations. Therefore, we will have to continue to rely on third-party sources of capital, which may or may not be available on favorable terms, or at all.

Our principal sources of liquidity are our cash flows from operations, funds available under our Credit Agreement that matures in August 2015 and available cash and cash equivalents. On February 25, 2013, we entered into a \$175 million senior secured revolving credit agreement (the Credit Agreement ) with a group of commercial banks led by JPMorgan Chase Bank, N.A. (the Bank Syndicate ), which is scheduled to mature in August 2015 and a \$100 million senior secured long-term loan agreement with the Prudential Insurance Company of America (the Prudential Loan Agreement ), which matures in February 2021. On February 25, 2013, we also repaid and terminated our existing credit agreement with a group of commercial banks led by JPMorgan Chase Bank, N.A. and our term loan agreement with TD Bank. For additional information, please refer to Credit Agreement and Prudential Loan Agreement in Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources which appears in this Annual Report on Form 10-K.

Our ability to meet the financial and other covenants relating to our Credit Agreement and our Prudential Loan Agreement is dependent on our continued ability to meet certain criteria as further described in note 4 in Item 8. Financial Statements and Supplementary Data Notes to Consolidated Financial Statements and the performance of our tenants. If we are not in compliance with one or more of our covenants, which could result in an event of default under our Credit Agreement or our Prudential Loan Agreement, there can be no assurance that our lenders would waive such non-compliance. This could have a material adverse affect on our business, financial condition, results of operation, liquidity, ability to pay dividends or stock price.

As part of our overall growth strategy, we regularly review acquisition and financing opportunities to acquire additional properties, and we expect to continue to pursue acquisitions that we believe will benefit our financial performance. To the extent that our current sources of liquidity are not sufficient to fund such acquisitions, we will require other sources of capital, which may or may not be available on favorable terms or at all.

Our access to third-party sources of capital depends upon a number of factors including general market conditions, the market's perception of our growth potential, financial stability, our current and potential future earnings and cash distributions, covenants and limitations imposed under our Credit Agreement and our Prudential Loan Agreement and the market price of our common stock.

***Our business operations may not generate sufficient cash for distributions or debt service.***

There is no assurance that our business will generate sufficient cash flow from operations or that future borrowings will be available to us in an amount sufficient to enable us to pay dividends on our common stock, to pay our indebtedness, or to fund our other liquidity needs. We may not be able to repay or refinance existing indebtedness on favorable terms, which could force us to dispose of properties on disadvantageous terms (which may also result in losses) or accept financing on unfavorable terms.

***We may acquire new properties, and this may create risks.***

We may acquire or develop properties when we believe that an acquisition or development matches our business strategies. These properties may have characteristics or deficiencies currently unknown to us that affect their value or revenue potential. It is possible that the operating performance of these properties may decline after we acquire them, they may not perform as expected and, if financed using debt or new equity

issuances, may result in shareholder dilution. Our acquisition of properties will expose us to the liabilities of those properties, some of which we may not be aware of at the time of acquisition. We face competition in pursuing these

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acquisitions and we may not succeed in leasing acquired properties at rents sufficient to cover their costs of acquisition and operations. Newly acquired properties may require significant management attention that would otherwise be devoted to our ongoing business. We may not succeed in consummating desired acquisitions. Consequences arising from or in connection with any of the foregoing could have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

*We seek to grow through accretive acquisitions, acquisitions of properties may be dilutive and may not produce the returns that we expect and we may not be able to successfully integrate acquired properties into our portfolio or manage our growth effectively, which could have a material adverse effect on our results of operations, financial condition and growth prospects.*

Acquisitions of properties may initially be dilutive to our net income, and such properties may not perform as we expect or produce the returns that we anticipate (including, without limitation, as a result of tenant bankruptcies, tenant concessions, our inability to collect rents and higher than anticipated operating expenses). Further, we may not successfully integrate one or more of these property acquisitions into our existing portfolio without operating disruptions or unanticipated costs. Additionally, to the extent we increase the size of our portfolio, we may not be able to adapt our management, administrative, accounting and operational systems, or hire and retain sufficient operational staff to integrate acquired properties into our portfolio or manage any future acquisitions of properties without operating disruptions or unanticipated costs. Moreover, our continued growth will require increased investment in management personnel, professional fees, other personnel, financial and management systems and controls and facilities, which will result in additional operating expenses. Under the circumstances described above, our results of operations, financial condition and growth prospects may be materially and adversely affected.

*We are subject to risks inherent in owning and leasing real estate.*

We are subject to varying degrees of risk generally related to leasing and owning real estate many of which are beyond our control. In addition to general risks applicable to us, our risks include, among others:

our liability as a lessee for long-term lease obligations regardless of our revenues,

deterioration in national, regional and local economic and real estate market conditions,

potential changes in supply of, or demand for, rental properties similar to ours,

competition for tenants and declining rental rates,

difficulty in selling or re-letting properties on favorable terms or at all,

impairments in our ability to collect rent or other payments due to us when they are due,

increases in interest rates and adverse changes in the availability, cost and terms of financing,

uninsured property liability,

the impact of present or future environmental legislation and compliance with environmental laws,

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adverse changes in zoning laws and other regulations,

acts of terrorism and war,

acts of God,

the potential risk of functional obsolescence of properties over time,

the need to periodically renovate and repair our properties, and

physical or weather-related damage to our properties.

Each of these factors could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price. In addition, real estate investments are relatively illiquid, which means that our ability to vary our portfolio of properties in response to changes in economic and other conditions may be limited.

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### ***Adverse developments in general business, economic, or political conditions could have a material adverse effect on us.***

Adverse developments in general business and economic conditions, including through recession, downturn or otherwise, either in the economy generally or in those regions in which a large portion of our business is conducted, could have a material adverse effect on us and significantly increase certain of the risks we are subject to. The general economic conditions in the United States are, and for an extended period of time may be, significantly less favorable than that of prior years. Among other effects, adverse economic conditions could depress real estate values, impact our ability to re-let or sell our properties and have an adverse effect on our tenants' level of sales and financial performance generally. Our revenues are dependent on the economic success of our tenants and any factors that adversely impact our tenants could also have a material adverse effect on our business, financial condition and results of operations, liquidity, ability to pay dividends or stock price.

### ***Substantially all of our tenants depend on the same industry for their revenues.***

We derive substantially all of our revenues from leasing, primarily on a triple-net basis, and financing retail motor fuel and convenience store properties to tenants in the petroleum marketing industry. Accordingly, our revenues are substantially dependent on the economic success of the petroleum marketing industry, and any factors that adversely affect that industry, such as disruption in the supply of petroleum or a decrease in the demand for conventional motor fuels due to conservation, technological advancements in petroleum-fueled motor vehicles, or an increase in the use of alternative fuel vehicles, or green technology could also have a material adverse effect on our business, financial condition and results of operations, liquidity, ability to pay dividends or stock price. The success of participants in the petroleum marketing industry depends upon the sale of refined petroleum products at margins in excess of fixed and variable expenses. The petroleum marketing industry is highly competitive and volatile. Petroleum products are commodities, the prices of which depend on numerous factors that affect supply and demand. The prices paid by our tenants and other petroleum marketers for products are affected by global, national and regional factors. A large, rapid increase in wholesale petroleum prices would adversely affect the profitability and cash flows of our tenants if the increased cost of petroleum products could not be passed on to their customers or if automobile consumption of gasoline was to decline significantly. We cannot be certain how these factors will affect petroleum product prices or supply in the future, or how in particular they will affect our tenants.

### ***Property taxes on our properties may increase without notice.***

Each of the properties we own or lease is subject to real property taxes. The leases for certain of the properties that we lease from third parties obligate us to pay real property taxes with regard to those properties. The real property taxes on our properties and any other properties that we acquire or lease in the future may increase as property tax rates change and as those properties are assessed or reassessed by tax authorities. To the extent that our tenants are not responsible for property taxes pursuant to their contractual arrangements with us or are unable or unwilling to pay such increase in accordance with their leases, our net operating expenses may increase.

### ***We incur significant operating costs as a result of environmental laws and regulations which costs could significantly rise and reduce our profitability.***

We are subject to numerous existing federal, state and local laws and regulations, including matters relating to the protection of the environment. Under certain environmental laws, a current or previous owner or operator of real estate may be liable for contamination resulting from the presence or discharge of hazardous or toxic substances or petroleum products at, on, or under, such property, and may be required to investigate and clean-up such contamination. Such laws typically impose liability and clean-up responsibility without regard to whether the owner or operator knew of or caused the presence of the contaminants, or the timing or cause of the contamination, and the liability under such laws has been interpreted to be joint and several unless the harm is divisible and there is a reasonable basis for allocation of responsibility. For example, liability may arise as a result of the historical use of a property or from the migration of contamination from adjacent or nearby properties. Any such contamination or liability may also reduce the value of the property. In addition, the owner or operator of a property may be subject to claims by third parties based on injury, damage and/or costs, including investigation and clean-up costs, resulting from environmental contamination present at or emanating from a property. The properties owned or controlled by us are leased primarily as retail motor fuel and convenience store properties, and therefore may contain, or may have contained, USTs for the storage of petroleum products and other hazardous or toxic substances, which creates a potential for the release of such products or substances. Some of our properties may be subject to regulations regarding the retirement and decommissioning or removal of long-lived assets including buildings containing hazardous materials, USTs and other equipment. Some of the properties may be adjacent to or near properties that have contained or currently contain USTs used to store petroleum products or other hazardous or toxic substances. In addition, certain of the properties are on, adjacent to, or near properties upon which others have engaged or may in the future engage in activities that may release petroleum products or other hazardous or toxic substances. There may be other environmental problems associated with our properties of which we are unaware. These problems may make it more difficult for us to re-let or sell our properties on favorable terms, or at all.



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For additional information with respect to pending environmental lawsuits and claims, and environmental remediation obligations and estimates see Item 3. Legal Proceedings , Environmental Matters in Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations and note 6 in Item 8. Financial Statements and Supplementary Data Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.

We enter into leases and various other agreements which allocate responsibility for known and unknown environmental liabilities by establishing the percentage and method of allocating responsibility between the parties. Our tenants are directly responsible to pay for (i) remediation of environmental contamination they cause and compliance with various environmental laws and regulations as the operators of our properties, and (ii) environmental liabilities allocated to them under the terms of our leases and various other agreements. Generally, the liability for the retirement and decommissioning or removal of USTs and other equipment is the responsibility of our triple-net tenants. We are contingently liable for these obligations in the event that our tenants do not satisfy their responsibilities. A liability has not been accrued for obligations that are the responsibility of our tenants (other than amounts accrued for the Marketing Environmental Liabilities accrued in the fourth quarter of 2011). 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.

We cannot provide any assurance that the programs under which we are reimbursed from state UST remediation funds will continue to be available to us. 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. 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. Adjustments to accrued liabilities for environmental remediation obligations will be reflected in our financial statements as they become probable and a reasonable estimate of fair value can be made.

It is possible that our assumptions regarding the ultimate allocation methods and share of responsibility that we used to allocate environmental liabilities may change, which may result in adjustments to the amounts recorded for environmental litigation accruals and environmental remediation liabilities. We will be required to accrue for environmental liabilities that we believe are allocable to others under various other agreements if we determine that it is probable that the counterparty will not meet its environmental obligations. We may ultimately be responsible to pay for environmental liabilities as the property owner if the counterparty fails to pay them.

We cannot predict what environmental legislation or regulations may be enacted in the future, or if or how existing laws or regulations will be administered or interpreted with respect to products or activities to which they have not previously been applied. We cannot predict whether state UST fund programs will be administered and funded in the future in a manner that is consistent with past practices and if future environmental spending will continue to be eligible for reimbursement at historical recovery rates under these programs. Compliance with more stringent laws or regulations, as well as more vigorous enforcement policies of the regulatory agencies or stricter interpretation of existing laws which may develop in the future, could have an adverse effect on our financial position, or that of our tenants, and could require substantial additional expenditures for future remediation.

As a result of the factors discussed above, or others, compliance with environmental laws and regulations could have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

***We are defending pending lawsuits and claims and are subject to material losses.***

We are subject to various lawsuits and claims, including litigation related to environmental matters, such as those arising from leaking USTs and releases of motor fuel into the environment, and toxic tort claims. The ultimate resolution of certain matters cannot be predicted because considerable uncertainty exists both in terms of the probability of loss and the estimate of such loss. Our ultimate liabilities resulting from such lawsuits and claims, if any, 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 pending environmental lawsuits and claims and environmental remediation obligations and estimates see Item 3. Legal Proceedings and Environmental Matters in Item 7. Management s Discussion and Analysis of Financial Condition and Results of Operations and notes 3 and 6 in Item 8. Financial Statements and Supplementary Data Notes to Consolidated Financial Statements in this Annual Report on Form 10-K.



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***A significant portion of our properties are concentrated in the Northeast and Mid-Atlantic regions of the United States, and adverse conditions in those regions, in particular, could negatively impact our operations.***

A significant portion of the properties we own and lease are located in the Northeast and Mid-Atlantic regions of the United States. Because of the concentration of our properties in those regions, in the event of adverse economic conditions in those regions, we would likely experience higher risk of default on payment of rent to us than if our properties were more geographically diversified. Additionally, the rents on our properties may be subject to a greater risk of default than other properties in the event of adverse economic, political, or business developments or natural hazards that may affect the Northeast or Mid-Atlantic United States and the ability of our lessees to make rent payments. This lack of geographical diversification could have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

***We are in a competitive business.***

The real estate industry is highly competitive. Where we own properties, we compete for tenants with a large number of real estate property owners and other companies that sublet properties. Our principal means of competition are rents we are able to charge in relation to the income producing potential of the location. In addition, we expect other major real estate investors, some with much greater financial resources or more experienced personnel than we have, will compete with us for attractive acquisition opportunities. These competitors include petroleum manufacturing, distributing and marketing companies, other REITs, public and private investment funds and other individual and institutional investors. This competition has increased prices for properties we seek to acquire and may impair our ability to make suitable property acquisitions on favorable terms in the future.

***We are exposed to counterparty risk and there can be no assurances that we will effectively manage or mitigate this risk.***

We regularly interact with counterparties in various industries. The types of counterparties most common to our transactions and agreements include, but are not limited to, landlords, tenants, vendors and lenders. Our most significant counterparties include, but are not limited to the members of the Bank Syndicate related to our Credit Agreement and the lender that is the counterparty to the Prudential Loan Agreement and one of our tenants from whom we derive a significant amount of revenue. The default, insolvency or other inability of a significant counterparty to perform its obligations under an agreement or transaction, including, without limitation, as a result of the rejection of an agreement or transaction in bankruptcy proceedings, could have a material adverse effect on us. One of our tenants, CPD NY Energy Corp., a subsidiary of Chestnut Petroleum Dist. (together with its affiliates, CPD ), represents 18% and 12% of our revenues from rental properties for 2012 and 2011, respectively. It is possible that as a result of either acquiring additional properties from CPD or as a result of disposing some of our existing properties, CPD could account for a greater percentage of our revenues from rental properties. We may also undertake additional transactions with our other existing tenants which would further concentrate our sources of revenues. Therefore, the failure of a major tenant is likely to have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

***We are subject to losses that may not be covered by insurance.***

We, and certain of our tenants, carry insurance against certain risks and in such amounts as we believe are customary for businesses of our kind. However, as the costs and availability of insurance change, we may decide not to be covered against certain losses (such as certain environmental liabilities, earthquakes, hurricanes, floods and civil disorder) where, in the judgment of management, the insurance is not warranted due to cost or availability of coverage or the remoteness of perceived risk. There is no assurance that these insurance coverages are or will be sufficient to cover actual losses incurred. The destruction of, or significant damage to, or significant liabilities arising out of conditions at, our properties due to an uninsured cause would result in an economic loss and could result in us losing both our investment in, and anticipated profits from, such properties. When a loss is insured, the coverage may be insufficient in amount or duration, or a lessee's customers may be lost, such that the lessee cannot resume its business after the loss at prior levels or at all, resulting in reduced rent or a default under its lease. Any such loss relating to a large number of properties could have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

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***Failure to qualify as a REIT under the federal income tax laws would have adverse consequences to our shareholders.***

We elected to be treated as a REIT under the federal income tax laws beginning January 1, 2001. We cannot, however, guarantee that we will continue to qualify in the future as a REIT. We cannot give any assurance that new legislation, regulations, administrative interpretations or court decisions will not significantly change the requirements relating to our qualification. If we fail to qualify as a REIT, we would not be allowed a deduction for distributions to shareholders in computing our taxable income and will again be subject to federal income tax at regular corporate rates, we could be subject to the federal alternative minimum tax, we could be required to pay significant income taxes and we would have less money available for our operations and distributions to shareholders. This would likely have a significant adverse effect on the value of our securities. We could also be precluded from treatment as a REIT for four taxable years following the year in which we lost the qualification, and all distributions to shareholders would be taxable as regular corporate dividends to the extent of our current and accumulated earnings and profits. Loss of our REIT status could have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

***We are exposed to interest rate risk and there can be no assurances that we will manage or mitigate this risk effectively.***

We are exposed to interest rate risk, primarily as a result of our Credit Agreement. Borrowings under our Credit Agreement bear interest at a floating rate. Accordingly, an increase in interest rates will increase the amount of interest we must pay under our Credit Agreement. Our interest rate risk may materially change in the future if we increase our borrowings under the Credit Agreement, or amend our Credit Agreement or Prudential Loan Agreement, seek other sources of debt or equity capital or refinance our outstanding debt. A significant increase in interest rates could also make it more difficult to find alternative financing on desirable terms. (For additional information with respect to interest rate risk, see Item 3. Quantitative and Qualitative Disclosures About Market Risks, in this Annual Report on Form 10-K.)

***Future issuances of equity securities could dilute the interest of holders of our equity securities.***

Our future growth will depend upon our ability to raise additional capital. If we were to raise additional capital through the issuance of equity securities, we could dilute the interest of holders of our common stock. The interest of our common stockholders could also be diluted by the issuance of shares of common stock pursuant to stock incentive plans. Accordingly, the Board of Directors may authorize the issuance of equity securities that could dilute, or otherwise adversely affect, the interest of holders of our common stock.

***We may change our dividend policy and the dividends we pay may be subject to significant volatility.***

The decision to declare and pay dividends on our common stock in the future, as well as the timing, amount and composition of any such future dividends, will be at the sole discretion of our Board of Directors and will depend on such factors as the Board of Directors deems relevant. In addition, our Credit Agreement and our Prudential Loan Agreement prohibit the payments of dividends during certain events of default. During 2011 and 2012, the Board of Directors significantly reduced, eliminated and then reinstated at a significantly reduced rate, our quarterly dividend. (See the table of cash dividends declared in 2011 and 2012 in Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchase of Equity Securities for additional information.) No assurance can be given that our financial performance in the future will permit our payment of any dividends or that the amount of dividends we pay, if any, will not fluctuate significantly.

Under the Maryland General Corporation Law, our ability to pay dividends would be restricted if, after payment of the dividend, (1) we would not be able to pay indebtedness as it becomes due in the usual course of business or (2) our total assets would be less than the sum of our liabilities plus the amount that would be needed, if we were to be dissolved, to satisfy the rights of any shareholders with liquidation preferences. There currently are no shareholders with liquidation preferences.

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. The Internal Revenue Service ( IRS ) has allowed the use of a procedure, as a result of which we could satisfy the REIT income distribution requirement by making a distribution on our common stock comprised of (i) shares of our common stock having a value of up to 80% of the total distribution and (ii) cash in the remaining amount of the total distribution, in lieu of paying the distribution entirely in cash. In order to use this procedure, we would need to seek and obtain a private letter ruling of the IRS to the effect that the procedure is applicable to our situation. Without obtaining such a private letter ruling, we cannot provide any assurance that we will be able to satisfy our REIT income distribution requirement by making distributions payable in whole or in part in shares of our common stock. 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 IRS. In the event that we pay a portion of



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a dividend in shares of our common stock, taxable U.S. shareholders would be required to pay tax on the entire amount of the dividend, including the portion paid in shares of common stock, in which case such shareholders might have to pay the tax using cash from other sources. If a U.S. shareholder sells the stock it receives as a dividend in order to pay this tax, the sales proceeds may be less than the amount included in income with respect to the dividend, depending on the market price of our common stock at the time of the sale. Furthermore, with respect to non-U.S. shareholders, we may be required to withhold U.S. tax with respect to such dividend, including in respect of all or a portion of such dividend that is payable in stock. In addition, if a significant number of our shareholders sell shares of our common stock in order to pay taxes owed on dividends, such sales would put downward pressure on the market price of our common stock.

As a result of the factors described herein and elsewhere in this Annual Report on Form 10-K and those that are described from time to time in our other filings with the SEC, 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, revenues, operating expenses, results of operations, liquidity, ability to pay dividends or our stock price.

### ***Changes in market conditions could adversely affect the market price of our publicly traded common stock.***

As with other publicly traded securities, the market price of our publicly traded common stock depends on various market conditions, which may change from time-to-time. Among the market conditions that may affect the market price of our publicly traded common stock are the following:

our financial condition and performance and that of our significant tenants,

the market's perception of our growth potential and potential future earnings,

the reputation of REITs generally and the reputation of REITs with portfolios similar to us,

the attractiveness of the securities of REITs in comparison to securities issued by other entities (including securities issued by other real estate companies),

an increase in market interest rates, which may lead prospective investors to demand a higher distribution rate in relation to the price paid for publicly traded securities,

the extent of institutional investor interest in us, and

general economic and financial market conditions.

***In order to preserve our REIT status, our charter limits the number of shares a person may own, which may discourage a takeover that could result in a premium price for our common stock or otherwise benefit our stockholders.***

Our charter, with certain exceptions, authorizes our Board of Directors to take such actions as are necessary and desirable to preserve our qualification as a REIT for federal income tax purposes. Unless exempted by our Board of Directors, no person may actually or constructively own more than 5% (by value or number of shares, whichever is more restrictive) of the outstanding shares of our common stock or the outstanding shares of any class or series of our preferred stock, which may inhibit large investors from desiring to purchase our stock. This restriction may have the effect of delaying, deferring, or preventing a change in control, including an extraordinary transaction (such as a merger, tender offer, or sale of all or substantially all of our assets) that might provide a premium price for our common stock or otherwise be in the best interest of our stockholders.

***Maryland law may discourage a third-party from acquiring us.***

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We are subject to the provisions of Maryland Business Combination Act (the Business Combination Act ) which prohibits transactions between a Maryland corporation and an interested stockholder or an affiliate of an interested stockholder for 5 (five) years after the most recent date on which the interested stockholder becomes an interested stockholder. Generally, pursuant to the Business Combination Act, an interested stockholder is a person who, together with affiliates and associates, beneficially owns, directly or indirectly, 10% or more of a Maryland corporation's voting stock. These provisions could have the effect of delaying, preventing or deterring a change in control of our Company or reducing the price that certain investors might be willing to pay in the future for shares of our capital stock. Additionally, the Maryland Control Share Acquisition Act may deny voting rights to shares involved in an acquisition of one-tenth or more of the voting stock of a Maryland corporation. In our charter and bylaws, we have elected not to have the Maryland Control Share Acquisition Act apply to any acquisition by any person of shares of stock of our company. However, in

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the case of the control share acquisition statute, our Board of Directors may opt to make this statute applicable to us at any time by amending our bylaws, and may do so on a retroactive basis. Finally, the unsolicited takeovers provisions of the Maryland General Corporation Law permit our Board of Directors, without stockholder approval and regardless of what is currently provided in our charter or bylaws, to implement certain provisions that may have the effect of inhibiting a third-party from making an acquisition proposal for our Company or of delaying, deferring or preventing a change in control of our Company under circumstances that otherwise could provide the holders of our common stocks with the opportunity to realize a premium over the then current market price or that stockholders may otherwise believe is in their best interests.

### ***Inflation may adversely affect our financial condition and results of operations.***

Although inflation has not materially impacted our results of operations in the recent past, increased inflation could have a more pronounced negative impact on any variable rate debt we incur in the future and on our results of operations. During times when inflation is greater than increases in rent, as provided for in our leases, rent increases may not keep up with the rate of inflation. Likewise, even though our triple-net leases reduce our exposure to rising property expenses due to inflation, substantial inflationary pressures and increased costs may have an adverse impact on our tenants if increases in their operating expenses exceed increases in revenue, which may adversely affect the tenants' ability to pay rent.

### ***The loss of certain members of our management team could adversely affect our business.***

We depend upon the skills and experience of our executive officers. Loss of the services of any of them could have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price. Except for the employment agreement with our President and Chief Executive Officer, David B. Driscoll, we do not have employment agreements with any of our executives.

### ***Amendments to the Accounting Standards Codification made by the Financial Accounting Standards Board (the FASB) or changes in accounting standards issued by other standard-setting bodies may adversely affect our reported revenues, profitability or financial position.***

Our financial statements are subject to the application of GAAP in accordance with the Accounting Standards Codification, which is periodically amended by the FASB. The application of GAAP is also subject to varying interpretations over time. Accordingly, we are required to adopt amendments to the Accounting Standards Codification or comply with revised interpretations that are issued from time-to-time by recognized authoritative bodies, including the FASB and the SEC. Those changes could adversely affect our reported revenues, profitability or financial position.

### ***Terrorist attacks and other acts of violence or war may affect the market on which our common stock trades, the markets in which we operate, our operations and our results of operations.***

Terrorist attacks or other acts of violence or war could affect our business or the businesses of our tenants. The consequences of armed conflicts are unpredictable, and we may not be able to foresee events that could have a material adverse effect on us. More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility in the United States and worldwide financial markets and economy. Terrorist attacks also could be a factor resulting in, or a continuation of, an economic recession in the United States or abroad. Any of these occurrences could have a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

## **Item 1B. Unresolved Staff Comments**

None.

## **Item 2. Properties**

Nearly all of our properties are leased or sublet to petroleum distributors and retailers engaged in the sale of gasoline and other motor fuel products, convenience store products and automotive repair services who are responsible for the operations conducted at these properties and for the payment of taxes, maintenance, repair, insurance and other operating expenses relating to our properties. In those instances where we determine that the best use for a property is no longer as a retail motor fuel outlet, we will seek an alternative tenant or buyer for the property. As of December 31, 2012, we lease or sublet approximately 20 of our properties for uses such as quick serve restaurants, automobile sales and other retail purposes, excluding approximately 40 properties previously subject to the Master Lease with marketing which are currently held for sale and which have temporary occupancies.



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The following table summarizes the geographic distribution of our properties at December 31, 2012. The table also identifies the number and location of properties we lease from third-parties. In addition, we lease 5,800 square feet of office space at 125 Jericho Turnpike, Jericho, New York, which is used for our corporate headquarters, which we believe will remain suitable and adequate for such purposes for the immediate future.

|                | <b>OWNED<br/>BY<br/>GETTY<br/>REALTY</b> | <b>LEASED<br/>BY<br/>GETTY<br/>REALTY</b> | <b>TOTAL<br/>PROPERTIES<br/>BY STATE</b> | <b>PERCENT<br/>OF TOTAL<br/>PROPERTIES</b> |
|----------------|--|---|--|--|
| New York       | 296                                      | 61  | 357                                      | 33.0%                                      |
| Massachusetts  | 150                                      | 24  | 174                                      | 16.1                                       |
| New Jersey     | 108                                      | 16  | 124                                      | 11.5                                       |
| Connecticut    | 86                                       | 18  | 104                                      | 9.6  |
| Pennsylvania   | 96                                       | 2   | 98                                       | 9.1  |
| New Hampshire  | 47                                       | 5   | 52                                       | 4.8  |
| Maryland       | 42                                       | 2   | 44                                       | 4.1  |
| Virginia       | 27                                       | 3   | 30                                       | 2.8  |
| Rhode Island   | 15                                       | 2   | 17                                       | 1.6  |
| Texas          | 17                                       |   | 17                                       | 1.6  |
| Maine          | 12                                       |   | 12                                       | 1.1  |
| Hawaii         | 10                                       |   | 10                                       | 0.9  |
| California     | 8  | 1   | 9  | 0.8  |
| Delaware       | 8  | 1   | 9  | 0.8  |
| North Carolina | 8  |   | 8  | 0.7  |
| Florida        | 6  |   | 6  | 0.5  |
| Ohio           | 4  |   | 4  | 0.4  |
| Arkansas       | 3  |   | 3  | 0.3  |
| Illinois       | 1  |   | 1  | 0.1  |
| North Dakota   | 1  |   | 1  | 0.1  |
| Vermont        | 1  |   | 1  | 0.1  |
| Total          | 946                                      | 135                                       | 1,081                                    | 100.0%                                     |

(1) Includes nine terminal properties which are being marketed for sale owned in New York, New Jersey, Connecticut and Rhode Island. The properties that we lease from third-parties have a remaining lease term, including renewal option terms, averaging over 11 years. The following table sets forth information regarding lease expirations, including renewal and extension option terms, for properties that we lease from third-parties:

| <b>CALENDAR YEAR</b> | <b>NUMBER OF<br/>LEASES<br/>EXPIRING</b> | <b>PERCENT<br/>OF TOTAL<br/>LEASED<br/>PROPERTIES</b> | <b>PERCENT<br/>OF TOTAL<br/>PROPERTIES</b> |
|----------------------|--|---|--|
| 2013                 | 9  | 6.67  | 0.83                                       |
| 2014                 | 3  | 2.22  | 0.28                                       |
| 2015                 | 7  | 5.19  | 0.65                                       |
| 2016                 | 4  | 2.96  | 0.37                                       |
| 2017                 | 6  | 4.44  | 0.55                                       |
| Subtotal             | 29                                       | 21.48   | 2.68                                       |
| Thereafter           | 106                                      | 78.52   | 9.81                                       |



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|       |     |         |        |
|-------|-----|---------|--------|
| Total | 135 | 100.00% | 12.49% |
|-------|-----|---------|--------|

We have rights-of-first refusal to purchase or lease 90 of the properties we lease from third-parties. Approximately 71% of the properties we lease from third-parties are subject to automatic renewal or extension options.

For the year ended December 31, 2012 revenues from rental properties in continuing and discontinued operations included \$104.8 million of rent contractually due or received with respect to 1,128 average rental properties held during the year or an average annual rent contractually due or received of approximately \$93,000 per rental property. For the year ended December 31, 2011 revenues from rental properties in continuing and discontinued operations included \$110.4 million of rent contractually due or received with respect to 1,154 average rental properties held during the year or an average annual rent contractually due or received of approximately \$96,000 per rental property. The net revenue we are realizing from the properties that were previously subject to the Master Lease is less than the contractual rent we received from Marketing under the Master Lease.

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Rental unit expirations and the annualized contractual rent as of December 31, 2012 are as follows (in thousands, except for the number of rental units data):

| CALENDAR YEAR | NUMBER OF RENTAL UNITS EXPIRING (b) | ANNUALIZED CONTRACTUAL RENT(a) | PERCENTAGE OF TOTAL ANNUALIZED RENT |
|---------------|-------------------------------------|--------------------------------|-------------------------------------|
| 2013          | 244                                 | 10,543                         | 13.7                                |
| 2014          | 29                                  | 1,776                          | 2.3                                 |
| 2015          | 22                                  | 668                            | 0.9                                 |
| 2016          | 17                                  | 1,269                          | 1.7                                 |
| 2017          | 35                                  | 1,742                          | 2.3                                 |
| 2018          | 14                                  | 1,550                          | 2.0                                 |
| 2019          | 66                                  | 5,382                          | 7.0                                 |
| 2020          | 39                                  | 4,076                          | 5.3                                 |
| 2021          | 43                                  | 3,241                          | 4.2                                 |
| 2022          | 2                                   | 147                            | 0.2                                 |
| Thereafter    | 576                                 | 46,315                         | 60.4                                |
| Total         | 1,087                               | \$ 76,709                      | 100.00%                             |

- (a) Represents the monthly contractual rent due from tenants under existing leases as of December 31, 2012 multiplied by 12. This amount excludes real estate tax reimbursements which are billed to the tenant when paid.
- (b) Rental units include properties subdivided into multiple premises with separate tenants. Rental units also include individual properties comprising a single premises as such term is defined under a unitary master lease related to such properties. With respect to a unitary master lease that includes properties that we lease from third-parties, the expiration dates for rental units refers to the dates that the leases with the third-parties expire and upon which date our tenant must vacate those properties, not the expiration date of the unitary master lease itself.

In the opinion of our management, our owned and leased properties are adequately covered by casualty and liability insurance. In addition, we generally require our tenants to provide insurance for all properties they lease from us, including casualty, liability, pollution legal liability, fire and extended coverage in amounts and on other terms satisfactory to us. We are evaluating potential capital expenditures and funding sources for properties that were previously subject to the Master Lease and which are not currently subject to long-term leases. We have no current plans to make material improvements to any of our properties other than the properties previously subject to the Master Lease with Marketing. However, our tenants frequently make improvements to the properties leased from us at their expense. In certain of our new leases, we have committed to co-invest as much as \$14.1 million in capital improvements in our properties. We are not aware of any material liens or encumbrances on any of our properties.

During 2012, we sold 54 properties for \$15.4 million in the aggregate and as of the date of this filing, in 2013, we have sold an additional 42 properties for \$17.5 million in the aggregate, including one terminal. We are continuing our efforts to sell approximately 60 properties that have previously had their underground storage tanks removed and eight petroleum distribution terminals although alternatively we may seek to re-let some of these properties and terminals. With respect to the terminals we own, it may be costly and time consuming for us or potential tenants or buyers to upgrade the terminal facilities to competitive standards within the industry, obtain or renew operating permits and attract customers to store their petroleum products at these locations. With respect to retail properties that are vacant or have had underground storage tanks and related equipment removed, it may be more difficult or costly to re-let or sell such properties as gas stations because of capital costs or possible zoning or permitting rights that are required and that may have lapsed during the period since gasoline was last sold at the property. Conversely, it may be easier to re-let or sell properties where underground storage tanks and related equipment have been removed if the property will not be used as a retail motor fuel outlet or if environmental contamination has been or is being remediated. In accordance with Generally Accepted Accounting Principles, substantially all of these properties have met the criteria to be classified as held for sale.

Since the Master Lease was structured as a triple-net lease, Marketing (as the lessee) had the responsibility for the maintenance, repair, real estate taxes, insurance and general upkeep of these properties ( Property Expenditures ) during the term of the Master Lease. Marketing failed to meet many of its obligations to undertake the Property Expenditures related to our properties. In addition to having to incur the costs of the Property Expenditures, Marketing did not pay any additional Property Expenditures for the period after termination of the Master Lease. We

expect to incur significant costs over a period of years to upgrade the properties to competitive standards within the industry for required renovations, replacement of underground storage tanks and related equipment or environmental remediation, zoning and permitting ( Capital Improvements ). We anticipate incurring significant Property Expenditures and Capital Improvement costs. It is also possible that our estimates for environmental remediation and tank removal expenses relating to these properties will be higher than the Marketing Environmental Liabilities that we have accrued and that issues involved in re-letting or repositioning these properties may require significant management attention that would otherwise be devoted to our ongoing business.

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### **Item 3. Legal Proceedings**

We are engaged in a number of legal proceedings, many of which we consider to be routine and incidental to our business. The following is a description of material legal proceedings, including those involving private parties and governmental authorities under federal, state and local laws regulating the discharge of materials into the environment. We are vigorously defending all of the legal proceedings involving us, including each of the legal proceedings matters listed below.

In 1991, the State of New York commenced an action in the Supreme Court, Albany County, against Kingston Oil Supply Corp. (our former heating oil subsidiary), Charles Baccaro and Amos Post, Inc. The action seeks recovery for reimbursement of investigation and remediating costs incurred by the New York Environmental Protection and Spill Compensation Fund, together with interest and statutory penalties under the New York Navigation Law. We answered the complaint on behalf of Kingston Oil Supply Corp. and Amos Post Inc. Thereafter, from approximately 1993 to November 2011, the case remained dormant except for a brief period in 2002 when the State of New York indicated an intention to prosecute the lawsuit. In November 2011, the State of New York recommenced efforts to pursue its claims against us for reimbursement of costs, interest and statutory penalties under the Navigation Law. We are asserting defenses to liability and to damages.

In September 2004, the State of New York commenced an action against us, United Gas Corp., Costa Gas Station, Inc., The Ingraham Bedell Corporation, Exxon Mobil Corporation, Shell Oil Company, Shell Oil Products Company, Motiva Enterprises, LLC, and related parties, 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 retail motor fuel 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. Discovery in this case is ongoing.

In October 2007, we received a demand from the State of New York to pay costs allegedly arising from investigation and remediation of petroleum spills that occurred at a property formerly owned by us and taken by eminent domain by the State of New York in 1991. We responded to the State of New York's demand and denied responsibility for reimbursement of such costs. In August 2010, the State of New York commenced a lawsuit in New York Supreme Court, Albany County against us, Bryant Taconic Corp. and related parties seeking damages under the New York Navigation Law. We have interposed an answer asserting numerous affirmative defenses. Discovery in this case is ongoing.

In September 2008, we received a directive and notice of violation from the New Jersey Department of Environmental Protection ( NJDEP ) calling for a remedial investigation and cleanup, to be conducted by us and Gary and Barbara Galliker, individually and trading as Millstone Auto Service, Auto Tech, and other named parties, of petroleum-related contamination found at a retail motor fuel property located in Millstone Township, New Jersey. We did not own or lease this property, but did supply gas to the operator of this property in 1985 and 1986. We responded to the NJDEP, denying liability. In November 2009, the NJDEP issued an Administrative Order and Notice of Civil Administrative Penalty Assessment (the Order and Assessment ) to us, Marketing and Gary and Barbara Galliker, individually and trading as Millstone Auto Service. We have filed a request for a hearing to contest the allegations of the Order and Assessment, but the date of the hearing has not yet been scheduled.

In November 2009, an action was commenced by the State of New York in the Supreme Court, Albany County, seeking the recovery of costs incurred in remediating alleged petroleum contamination down gradient of a gasoline station formerly owned by us, and gasoline stations that were allegedly owned or operated by other named defendants, including M&A Realty, Inc., Gas Land Petroleum, Inc., and Mid-Valley Oil Company. We answered the complaint, denying liability and asserting affirmative defenses and cross claims against co-defendants. We have also tendered the matter to M&A Realty Inc. for defense and indemnification as relates to discharges of petroleum that were reported on or after July 1994 at the site which is the subject of allegations against us. This site was leased by us to M&A Realty Inc. in 1994 and sold to M&A Realty Inc. in 2002. M&A Realty Inc. demanded defense and indemnity from us for contamination at this site as of 1994. The State of New York has also commenced a separate but related action in the Supreme Court, Albany County, against us and M&A Realty, Inc. seeking recovery of costs for clean-up of petroleum contamination at the site of the gas station which is the subject of allegations against us and M&A Realty, Inc. in the first action. We answered the complaint, denying liability and asserting affirmative defenses and cross claims against M&A Realty, Inc. We also tendered the matter to M&A Realty, Inc. for indemnity on the same basis as in the first action, and M&A Realty, Inc. likewise has demanded defense and indemnity from us on the same basis as it put forth in the first action. Discovery in these cases is ongoing.

#### *MTBE Litigation*

During 2010, we were defending 53 lawsuits brought on behalf of private and public water providers and governmental agencies located in Connecticut, Florida, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, Virginia, and West



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Virginia. A majority of these cases were among the more than one hundred cases that were transferred from various state and federal courts throughout the country and consolidated in the United States District Court for the Southern District of New York for coordinated Multi-District Litigation ( MDL ) proceedings. The balance of these cases against us were pending in the Supreme Court of New York, Nassau County. All of the cases against us alleged (and, as described below with respect to one remaining case, continue to allege) various theories of liability due to contamination of groundwater with methyl tertiary butyl ether (a fuel derived from methanol, commonly referred to as MTBE ) as the basis for claims seeking compensatory and punitive damages. The cases named us as a defendant along with approximately fifty petroleum refiners, manufacturers, distributors and retailers of MTBE, or gasoline containing MTBE, including Irving Oil Corporation, Mobil Oil Corporation, Sunoco, Inc., Texaco, Inc., Tosco Corporation, Unocal Corporation, Valero Energy Corporation, Marathon Oil Company, Shell Oil Company, Giant Yorktown, Inc., BP Amoco Chemical Company, Inc., Atlantic Richfield Company, Coastal Oil New England, Inc., Chevron Texaco Corporation, Amerada Hess Corp., Chevron U.S.A., Inc., CITGO Petroleum Corporation, ConocoPhillips Company, Exxon Mobil Corporation, Getty Petroleum Marketing Inc., and Gulf Oil Limited Partnership. During 2010, we reached agreements to settle two plaintiff classes covering 52 of the 53 pending cases. A settlement payment of \$1.3 million was made during the third quarter of 2010 covering 27 cases and a settlement payment of \$0.5 million was made during the first quarter of 2011 covering 25 cases. Presently we remain a defendant in one MTBE case involving multiple locations throughout the State of New Jersey brought by various governmental agencies of the State of New Jersey, including the NJDEP. This case is still in discovery stages.

We have provided a litigation reserve as to this remaining MDL case; however, there remains uncertainty as to the accuracy of the allegations in this MTBE case as they relate to us, our defenses to the claims, and the aggregate possible amount of damages for which we might be held liable.

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

In September 2003, we received a directive (the Directive ) issued by the 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 ( NRD or NRDs ) resulting from the discharges of hazardous substances along the lower Passaic River (the Lower Passaic River ). Other named recipients of the Directive are 360 North Pastoria Environmental Corporation, Amerada Hess Corporation, American Modern Metals Corporation, Apollo Development and Land Corporation, Ashland Inc., AT&T Corporation, Atlantic Richfield Assessment Company, Bayer Corporation, Benjamin Moore & Company, Bristol Myers-Squibb, Chemical Land Holdings, Inc., Chevron Texaco Corporation, Diamond Alkali Company, Diamond Shamrock Chemicals Company, Diamond Shamrock Corporation, Dilorenzo Properties Company, Dilorenzo Properties, L.P., Drum Service of Newark, Inc., E.I. Dupont De Nemours and Company, Eastman Kodak Company, Elf Sanofi, S.A., Fine Organics Corporation, Franklin-Burlington Plastics, Inc., Franklin Plastics Corporation, Freedom Chemical Company, H.D. Acquisition Corporation, Hexcel Corporation, Hilton Davis Chemical Company, Kearny Industrial Associates, L.P., Lucent Technologies, Inc., Marshall Clark Manufacturing Corporation, Maxus Energy Corporation, Monsanto Company, Motor Carrier Services Corporation, Nappwood Land Corporation, Noveon Hilton Davis Inc., Occidental Chemical Corporation, Occidental Electro-Chemicals Corporation, Occidental Petroleum Corporation, Oxy-Diamond Alkali Corporation, Pitt-Consol Chemical Company, Plastics Manufacturing Corporation, PMC Global Inc., Propane Power Corporation, Public Service Electric & Gas Company, Public Service Enterprise Group, Inc., Purdue Pharma Technologies, Inc., RTC Properties, Inc., S&A Realty Corporation, Safety-Kleen EnviroSystems Company, Sanofi S.A., SDI Divestiture Corporation, Sherwin Williams Company, SmithKline Beecham Corporation, Spartech Corporation, Stanley Works Corporation, Sterling Winthrop, Inc., STWB Inc., Texaco Inc., Texaco Refining and Marketing Inc., Thomasset Colors, Inc., Tierra Solution, Incorporated, Tierra Solutions, Inc., and Wilson Five Corporation.

The Directive provided, among other things, that the recipients thereof must conduct an assessment of the natural resources that have been injured by the discharges into the Lower Passaic River and must implement interim compensatory restoration for the injured natural resources. NJDEP alleges that our liability arises from alleged discharges originating from our Newark, New Jersey Terminal site. We responded to the Directive by asserting that we were not liable. There has been no material activity and/or communications by NJDEP with respect to the Directive since early after its issuance.

Effective May 2007, the United States Environmental Protection Agency ( EPA ) entered into an Administrative Settlement Agreement and Order on Consent ( AOC ) with over 70 parties comprising a Cooperating Parties Group ( CPG ) (many of whom are also named in the Directive) who have collectively agreed to perform a Remedial Investigation and Feasibility Study ( RI/FS ) for the Lower Passaic River. We are a party to the AOC and are a member of the CPG. 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, and is scheduled to be completed in or about 2015. In connection with the RI/FS work, the CPG has sampled river sediments at river mile 10.9. Subsequently, all members of the CPG except Occidental Chemical Corporation ( Occidental ) 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. Similar to the RI/FS work, the CPG entered into an interim allocation for the costs of the river mile 10.9 work. EPA issued a Unilateral Order to Occidental directing Occidental to participate and contribute to the cost of the river mile 10.9 work and discussions regarding Occidental's participation in the river

mile 10.9 work are ongoing. Concurrently, the EPA is preparing a proposed Focused Feasibility Study ( FFS ) that the EPA claims will

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address sediment issues in the lower eight miles of the Lower Passaic River. Based on the results of such sampling, the EPA may require interim remediation activities at river mile 10.9 prior to the completion of the RI/FS, although the scope and allocation of costs for such activities is not known at this time. The RI/FS and 10.9 AOC do not resolve liability issues for remedial work or restoration of, or compensation for, natural resource damages to the Lower Passaic River, which are not known at this time. As to such matters, separate proceedings or activities are currently ongoing.

In a related action, in December 2005, the State of New Jersey through various state agencies brought suit in the Superior Court of New Jersey, Law Division, against certain parties to the Directive, Occidental Chemical Corporation, Tierra Solutions, Inc., Maxus Energy Corporation and related entities which the State of New Jersey alleges are responsible for various categories of past and future damages resulting from discharges of hazardous substances to the Passaic River by a manufacturing facility located on Lister Avenue in Newark, NJ. In February 2009, certain of these defendants filed third-party complaints against approximately 300 additional parties, including us and other members of the CPG, seeking contribution for such parties' proportionate share of response costs, cleanup and removal costs, and other damages, based on their relative contribution to pollution of the Passaic River and adjacent bodies of water. We have answered the complaint, denying responsibility for any discharges of hazardous substances released into the Passaic River. The litigation is still in a pre-trial stage with a significant amount of discovery remaining, particularly as to third-parties.

We have made a demand upon Chevron/Texaco for indemnity under certain agreements between us and Chevron/Texaco that allocate environmental liabilities for the Newark Terminal site between the parties. In response, Chevron/Texaco has asserted that the proceedings and claims are still not yet developed enough to determine the extent to which indemnities apply. We are engaged in discussions with Chevron/Texaco regarding our demands for indemnification, and, to facilitate said discussions, in October 2009 entered into a Tolling/Standstill Agreement which tolls all claims by and among Chevron/Texaco and us that relate to the various Lower Passaic River matters from May 8, 2007, until either party terminates such Tolling/Standstill Agreement.

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.

### **Item 4. Mine Safety Disclosures**

None.



**Table of Contents****PART II****Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities****Capital Stock**

Our common stock is traded on the New York Stock Exchange (symbol: **GET**). There were approximately 18,600 beneficial holders of our common stock as of March 18, 2013, of which approximately 1,200 were holders of record. The price range of our common stock and cash dividends declared with respect to each share of common stock during the years ended December 31, 2012 and 2011 was as follows:

| <b>QUARTER ENDED</b> | <b>PRICE RANGE</b> |            | <b>CASH</b>                    |
|----------------------|--------------------|------------|--------------------------------|
|                      | <b>HIGH</b>        | <b>LOW</b> | <b>DIVIDENDS<br/>PER SHARE</b> |
| March 31, 2011       | \$ 31.89           | \$ 21.01   | \$ .4800                       |
| June 30, 2011        | 26.47              | 22.75      | .4800                          |
| September 30, 2011   | 26.33              | 14.42      | .2500                          |
| December 31, 2011    | 16.74              | 12.22      | .2500                          |
| March 31, 2012       | 18.06              | 13.62      |                                |
| June 30, 2012        | 19.41              | 15.02      | .1250                          |
| September 30, 2012   | 19.94              | 17.28      | .1250                          |
| December 31, 2012    | 18.88              | 15.65      | .1250                          |

For a discussion of potential limitations on our ability to pay future dividends see Item 1A. Risk Factors We may change our dividend policy and the dividends we pay may be subject to significant volatility, and Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations Liquidity and Capital Resources .

**Issuer Purchases of Equity Securities**

None.

**Sales of Unregistered Securities**

None.

**Table of Contents****Stock Performance Graph****Comparison of Five-Year Cumulative Return\***

|                      | 12/31/2007 | 12/31/2008 | 12/31/2009 | 12/31/2010 | 12/31/2011 | 12/31/2012 |
|----------------------|------------|------------|------------|------------|------------|------------|
| Getty Realty Corp.   | 100.00     | 87.48      | 107.31     | 150.34     | 72.37      | 95.67      |
| Standard & Poors 500 | 100.00     | 63.00      | 79.67      | 91.67      | 93.60      | 108.58     |
| Peer Group           | 100.00     | 75.15      | 100.71     | 130.02     | 138.35     | 161.18     |

Assumes \$100 invested at the close of the last day of trading on the New York Stock Exchange on December 31, 2007 in Getty Realty Corp. common stock, Standard & Poors 500, and Peer Group.

\* Cumulative total return assumes reinvestment of dividends.

We have chosen as our Peer Group the following companies: National Retail Properties, Entertainment Properties Trust, Realty Income Corp. and Hospitality Properties Trust. We have chosen these companies as our Peer Group because a substantial segment of each of their businesses is owning and leasing commercial properties. We cannot assure you that our stock performance will continue in the future with the same or similar trends depicted in the graph above. We do not make or endorse any predictions as to future stock performance.

This performance graph and related information shall not be deemed filed for the purposes of Section 18 of the Exchange Act or otherwise subject to the liability of that Section and shall not be deemed to be incorporated by reference into any filing that we make under the Securities Act or the Exchange Act.

**Table of Contents****Item 6. Selected Financial Data****GETTY REALTY CORP. AND SUBSIDIARIES****SELECTED FINANCIAL DATA**

(in thousands, except per share amounts and number of properties)

|   | FOR THE YEARS ENDED DECEMBER 31, |            |            |            |            |
|---|----------------------------------|------------|------------|------------|------------|
|   | 2012                             | 2011(a)    | 2010       | 2009(b)    | 2008       |
| <b>OPERATING DATA:</b>  |                                  |            |            |            |            |
| Total Revenues  | \$ 102,168                       | \$ 102,921 | \$ 78,360  | \$ 74,326  | \$ 70,603  |
| Earnings from continuing operations                                 | 13,808(c)                        | 9,424(d)   | 40,867     | 33,810     | 30,993     |
| Earnings (loss) from discontinued operations                        | (1,361)                          | 3,032      | 10,833     | 13,239     | 10,817     |
| Net earnings  | 12,447                           | 12,456     | 51,700     | 47,049     | 41,810     |
| Diluted earnings per common share:                                  |                                  |            |            |            |            |
| Earnings from continuing operations                                 | 0.41                             | 0.27       | 1.46       | 1.37       | 1.25       |
| Net earnings  | 0.37                             | 0.37       | 1.84       | 1.89       | 1.68       |
| Diluted weighted-average common shares outstanding                  | 33,395                           | 33,172     | 27,953     | 24,767     | 24,767     |
| Cash dividends declared per share                                   | 0.375                            | 1.46       | 1.91       | 1.89       | 1.87       |
| <b>FUNDS FROM OPERATIONS AND ADJUSTED FUNDS FROM OPERATION (e):</b> |                                  |            |            |            |            |
| Net earnings  | 12,447                           | 12,456     | 51,700     | 47,049     | 41,810     |
| Depreciation and amortization of real estate assets                 | 13,700                           | 10,336     | 9,738      | 11,027     | 11,875     |
| Gains on dispositions of real estate                                | (6,866)                          | (968)      | (1,705)    | (5,467)    | (2,787)    |
| Impairment charges  | 13,942                           | 20,226     |            | 1,135      |            |
| Funds from operations   | 33,223                           | 42,050     | 59,733     | 53,744     | 50,898     |
| Revenue Recognition Adjustments                                     | (4,433)                          | (1,163)    | (1,487)    | (2,065)    | (2,593)    |
| Allowance for deferred rental revenue                               |                                  | 19,758     |            |            |            |
| Acquisition costs   |                                  | 2,034      |            |            |            |
| Adjusted funds from operations                                      | 28,790                           | 62,679     | 58,246     | 51,679     | 48,305     |
| <b>BALANCE SHEET DATA (AT END OF YEAR):</b>                         |                                  |            |            |            |            |
| Real estate before accumulated depreciation and amortization        | \$ 562,316                       | \$ 615,854 | \$ 504,587 | \$ 503,874 | \$ 473,567 |
| Total assets  | 640,581                          | 635,089    | 423,178    | 428,990    | 387,813    |
| Debt  | 172,320                          | 170,510    | 64,890     | 175,570    | 130,250    |
| Shareholders' equity  | 372,749                          | 372,169    | 314,935    | 207,669    | 205,897    |
| <b>NUMBER OF PROPERTIES:</b>  |                                  |            |            |            |            |
| Owned   | 946                              | 996        | 907        | 910        | 878        |
| Leased  | 135                              | 153        | 145        | 161        | 182        |
| Total properties  | 1,081                            | 1,149      | 1,052      | 1,071      | 1,060      |

(a) Includes (from the respective dates of the acquisition) the effect of the \$111.6 million acquisition of 59 Mobil-branded gasoline station and convenience store properties in a sale/leaseback and loan transaction with CPD NY Energy Corp. which were acquired on January 13, 2011 and the effect of the \$87.0 million acquisition of 66 Shell-branded gasoline station and convenience store properties in a sale/leaseback transaction with Nouria Energy Ventures I, LLC which were acquired on March 31, 2011.

(b) Includes (from the date of the acquisition) the effect of the \$49.0 million acquisition of the real estate assets and improvements of 36 convenience store properties from White Oak Petroleum LLC which were acquired on September 25, 2009.

(c)

- Includes the effect of a \$13.5 million accounts receivable reserve and the effect of a \$6.3 million impairment charge, which are included in earnings from continuing operations primarily related to certain properties previously leased to Marketing under the Master Lease (for additional information regarding Marketing and the Master Lease, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operation General Marketing and the Master Lease .)
- (d) Includes the effect of a \$19.3 million non-cash deferred rent receivable reserve, the effect of a \$7.6 million accounts receivable reserve, and the effect of a \$15.9 million impairment charge, which are included in earnings from continuing operations primarily related to certain properties previously leased to Marketing under the Master Lease (For additional information regarding Marketing and the Master Lease, see Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations General Marketing and the Master Lease .)
- (e) In addition to measurements defined by accounting principles generally accepted in the United States of America ( GAAP ), our management also focuses on funds from operations ( FFO ) and adjusted funds from operations ( AFFO ) to measure our performance. FFO is generally considered to be an appropriate supplemental non-GAAP measure of the performance of real estate investment trusts ( REITs ). In accordance with the National Association of Real Estate Investment Trusts' modified guidance for reporting FFO, we have restated reporting of FFO to exclude non-cash impairment charges. FFO is defined by the National Association of Real Estate Investment Trusts as net earnings before depreciation and amortization of real estate assets, gains or losses on dispositions of real estate (including such non-FFO items reported in discontinued operations), non-cash impairment charges, extraordinary items, and cumulative effect of accounting change. Other REITs may use definitions of FFO and/or AFFO that are different than ours and; accordingly, may not be comparable. We believe that FFO and AFFO are helpful to 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 fundamental operating performance. FFO excludes various items such as gains or losses from property dispositions, depreciation and amortization of real estate assets, and non-cash impairment charges. In our case; however, GAAP net earnings and FFO typically include the impact of deferred rental revenue (straight-line rental revenue), the net amortization of above-market and below-market leases and income recognized from direct financing leases on the recognition of revenue from rental properties (collectively the Revenue Recognition Adjustments ), as offset by the impact of related collection reserves. GAAP net earnings and FFO from time to time may also include other unusual or infrequently occurring items. 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 are recognized on a straight-line (or an average) basis rather than when the payment is contractually due. The present

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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 revenue 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. Management pays particular attention to AFFO, a supplemental non-GAAP performance measure that we define as FFO less Revenue Recognition Adjustments, allowance for deferred rental revenue, acquisition costs, and other unusual or infrequently occurring items. In management's view, AFFO provides a more accurate depiction than FFO of our fundamental operating performance related to: (i) the impact of scheduled rent increases from operating leases; (ii) the rental revenue from acquired in-place leases; (iii) the impact of rent due from direct financing leases; and (iv) the impact of other unusual or infrequently occurring items. 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.

**Table of Contents****Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion and analysis should be read in conjunction with the Cautionary Note Regarding Forward-Looking Statements ; the sections in Part II entitled Item 1A. Risk Factors ; the selected financial data in Item 6. Selected Financial Data ; and the consolidated financial statements and related notes in Item 8. Financial Statements and Supplementary Data .

**GENERAL*****Real Estate Investment Trust***

We are a real estate investment trust ( REIT ) specializing in the ownership, leasing and financing of gas stations, convenience stores, automotive repair service facilities and petroleum distribution terminals. As of December 31, 2012, we owned 946 properties and leased from third parties 135 properties. We elected to be treated as a REIT under the federal income tax laws beginning January 1, 2001. As a REIT, we are not subject to federal corporate income tax on the taxable income we distribute to our shareholders. 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 shareholders each year.

***Retail Petroleum Marketing Business***

Our business model is to lease our properties on a triple-net basis primarily to petroleum distributors and to a lesser extent to individual operators. Our tenants operate our properties directly or sublet our properties to operators who operate their gas stations, convenience stores, automotive repair service facilities or other businesses at our properties. These tenants are responsible for the operations conducted at these 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. Substantially all of our tenants' financial results depend on the sale of refined petroleum products and 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. In those instances where we determine that the best use for a property is no longer as a gas station, we will seek an alternative tenant or buyer for the property. As of December 31, 2012, approximately 20 of our properties are leased for uses such as quick serve restaurants, automobile sales and other retail purposes, excluding approximately 40 properties described below which are currently being marketed for sale and which have temporary occupancies. (For additional information regarding our real estate business and our properties, see Item 1. Business Real Estate Business and Item 2. Properties .) (For information regarding factors that could adversely affect us relating to our lessees, see Part II, Item 1A. Risk Factors.)

***Repositioning the Marketing Portfolio***

More than 700 of the properties we own or lease as of December 31, 2012 were previously leased to Getty Petroleum Marketing Inc. ( Marketing ) comprising a unitary premises pursuant to a master lease (the Master Lease ) and we derived a majority of our revenues from the leasing of these properties under the Master Lease. On December 5, 2011, Marketing filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York (the Bankruptcy Court ). Marketing rejected the Master Lease pursuant to an Order issued by the Bankruptcy Court effective April 30, 2012. Our efforts to reposition the Master Lease portfolio to date have resulted in the following:

***Long-Term Triple-Net Leases.*** During the fourth quarter of 2012, we entered into four triple-net lease agreements covering 161 operating properties with affiliates of Capital Petroleum Group, Lehigh Gas Partners, Global Partners and BP North America. The properties subject to the leases are located in New York City and the surrounding New York and New Jersey metropolitan areas. The leases have 15 year initial terms with provisions for renewal terms and annual rent escalations.

During 2012, we entered into ten long-term triple-net unitary leases re-letting, in the aggregate, 443 operating properties previously leased to Marketing. We entered into six of these leases covering 282 properties in the second quarter of 2012 and four of these leases covering 161 properties in the fourth quarter of 2012. While we anticipate that we may ultimately enter into additional triple-net leases on smaller portfolios in 2013, we believe we have now completed all of the significant portfolio leases related to the repositioning of the portfolio of properties previously leased to Marketing.

***Remaining Operating Properties.*** Approximately 155 properties previously leased to Marketing and operating as gas stations are subject to month-to-month license agreements and interim fuel supply arrangements. We receive monthly occupancy payments directly from the licensee-operators while we remain responsible for certain costs associated with the properties. These month-to-month license agreements allow the licensees to occupy and use the properties as gas

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stations, convenience stores or automotive repair service facilities, and require the licensee-operators to sell fuel provided exclusively by Global Partners, with whom we have contracted for interim fuel supply. Under our agreement with Global, Global is the exclusive supplier of fuel to these licensee operators and is required to pay us a fee based in part on gallons sold and we pay to Global a monthly administrative service fee. Our month-to-month license agreements differ from our triple-net lease arrangements in that, among other things, we are responsible for the payment of certain environmental compliance costs and property operating expenses including maintenance and real estate taxes.

During the next 12 months, we intend to reposition these properties in order to maximize their value to us taking into account each property's intermediate and long-term investment requirements and potential. As a result of this process, we expect that we may dispose of or lease these remaining properties, either individually or in small portfolios. We also may make investments in certain of these properties in anticipation of leasing them or by contribution to capital expenditures required to be made by our tenants. We cannot predict the timing or the terms of any future sales or leases.

**Property Dispositions.** For the year ended December 31, 2012 we sold, for \$15.4 million in aggregate, 54 properties previously leased to Marketing which had their underground storage tanks removed by Marketing. As of the date of this filing on Form 10-K, in 2013, we have sold an additional 42 properties for \$17.5 million, including one terminal. We continue a process of selling substantially all of the remaining approximately 60 properties with underground storage tanks removed and eight terminals we own; however, the timing of pending transactions may be affected by factors beyond our control and we cannot predict the timing or terms of any future dispositions or leases. In accordance with GAAP, substantially all of these properties have met the criteria to be classified as held for sale.

We are generating less net revenue from the leasing of properties that were previously subject to the Master Lease than the contractual rent historically due from Marketing under the Master Lease. We expect that following the completion of the repositioning process, we will continue to generate less net revenue from these properties than previously received from Marketing under the Master Lease.

In 2012, we commenced paying operating expenses such as maintenance, repairs, real estate taxes, insurance and general upkeep related to these properties ( Property Expenditures ) and certain environmental related liabilities and expenses which Marketing was responsible to pay for ( the Marketing Environmental Liabilities ). Subject to various site-specific factors, we expect to continue to pay for varying types of Property Expenditures, and capital improvements, including replacing underground storage tanks and related equipment or other renovations ( Capital Improvements ), and Marketing Environmental Liabilities over a period of years relating to the properties previously subject to the Master Lease. In addition, we increased our number of tenants significantly and are performing property related functions previously performed by Marketing, both of which have resulted in permanent increases in our annual operating expenses. Costs involved with re-letting or repositioning properties formerly leased to Marketing and pursuit of our claims in connection with Marketing's bankruptcy resulted in temporary increases to our 2012 operating expenses. We incurred significant costs associated with Marketing's bankruptcy, including \$3.9 million in legal and litigation expenses incurred for the year ended December 31, 2012, of which \$2.6 million is included in general and administrative expense and \$1.3 million has been recorded as a receivable as reimbursable to us pursuant to the Litigation Funding Agreement (defined below). We expect certain costs, including repositioning costs and legal and litigation costs, to remain elevated in 2013.

We, or our tenants, have commenced eviction proceedings involving approximately 40 of our properties in various jurisdictions against Marketing's former subtenants (or sub-subtenants) who have not vacated our properties and most of whom have not accepted license agreements with us or have not entered into new agreements with our distributor tenants and therefore occupy our properties without right. We are incurring significant costs, primarily legal expenses, in connection with such proceedings.

### **Marketing and the Master Lease**

As described above, on December 5, 2011, Marketing filed for Chapter 11 bankruptcy protection in the Bankruptcy Court. On March 7, 2012, we entered into a stipulation with Marketing and with the Official Committee of Unsecured Creditors in the Bankruptcy proceedings (the Creditors Committee), which was approved and made an Order by the Bankruptcy Court on April 2, 2012 (the Stipulation). Pursuant to the terms of the Stipulation, in addition to our other pre-petition and post-petition claims, we are entitled to recover an administrative claim capped at \$10.5 million for the partial payment of fixed rent and performance of other obligations due from Marketing under the Master Lease from December 5, 2011 until possession of the properties subject to the Master Lease was returned to us effective April 30, 2012 (the Administrative Claim). Our Administrative Claim has priority over the claims of other creditors and certain of our other claims. As of the date of this filing on Form 10-K, the outstanding unpaid principal amount of our Administrative Claim is \$7.4 million.

The Bankruptcy Court has appointed a liquidating trustee (the Liquidating Trustee) to oversee the liquidation of the Marketing estate (the Marketing Estate). The Liquidating Trustee continues to oversee the Marketing Estate and pursue claims for the benefit of its creditors, including those related to the recovery of various deposits, including surety bonds, insurance policy claims





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and claims made to state funded tank reimbursement programs. We received distributions reducing our Administrative Claim of \$1.3 million in the third and fourth quarters of 2012 and \$1.7 million in the first quarter of 2013, from the Marketing Estate. As a result, in 2012, we reversed portions of our bad debt reserve for uncollectible amounts due from Marketing and reduced bad debt expense included in general and administrative expenses on our consolidated statement of income. We cannot provide any assurance that we will ultimately collect any additional claims against or unpaid amounts due from the Marketing Estate pursuant to the Plan of Liquidation, or otherwise.

In December 2011, the Marketing Estate filed a lawsuit against Marketing's former parent, Lukoil Americas Corporation, and certain of its affiliates (collectively, Lukoil), as well as the former directors and officers of Marketing (the Lukoil Complaint). The Lukoil Complaint asserts, among other claims, that Marketing's sale of assets to Lukoil in November 2009 constituted a fraudulent conveyance, and that the assets or their value can be recovered from Lukoil. In addition, the Lukoil Complaint asserts that the former directors and officers violated their fiduciary duties to Marketing in approving and effectuating the challenged sale, and are liable for money damages. The Liquidating Trustee is pursuing these claims for the benefit of the Marketing Estate. It is possible that the Liquidating Trustee will obtain a favorable judgment or will settle with the defendants, and therefore it is possible that we may ultimately recover a portion of our claims against Marketing, including our Administrative Claim, which has priority over most other creditors' claims, and our additional pre-petition and post-petition claims.

In October 2012, we entered into an agreement with the Marketing Estate to make loans and otherwise fund up to an aggregate amount of \$6.4 million to fund the prosecution of the Lukoil Complaint and certain Liquidating Trustee expenses incurred in connection with the wind-down of the Marketing Estate (the Litigation Funding Agreement). This agreement provides that we are entitled to receive proceeds, if any, from the successful prosecution of the Lukoil Complaint in an amount equal to the sum of (i) all funds advanced for wind-down costs and expert witness and consultant fees plus interest accruing at 15% per annum on such advances made by us; plus (ii) the greater of all funds advanced for legal fees and expenses relating to the prosecution of the Lukoil Complaint plus interest accruing at 15% per annum on such advances made by us, or 24% of the gross proceeds from any settlement or favorable judgment obtained by the Liquidating Trustee due to the Lukoil Complaint. It is possible that we may agree to advance amounts in excess of \$6.4 million. We advanced \$1.7 million in the fourth quarter of 2012 and \$0.1 million in the first quarter of 2013 to the Marketing Estate pursuant to the Litigation Funding Agreement. The Litigation Funding Agreement also provides that we are entitled to be reimbursed for up to \$1.3 million of our legal fees in connection with the Litigation Funding Agreement. Based on the terms of the Litigation Funding Agreement, we have recorded a receivable of \$3.0 million as of December 31, 2012, which includes amounts advanced and amounts due for reimbursable legal fees we incurred in connection with the Litigation Funding Agreement. Payments that we receive pursuant to the Litigation Funding Agreement will not reduce our Administrative Claim or our other pre-petition and post-petition claims against Marketing. A portion of the payments we receive pursuant to the Litigation Funding Agreement may be subject to federal income taxes. We cannot provide any assurance that we will be repaid any amounts we advance pursuant to the Litigation Funding Agreement or the reimbursable legal fees we have incurred.

Under the Master Lease, Marketing was responsible to pay for certain environmental related liabilities and expenses. As a result of Marketing's bankruptcy filing, we have accrued for the Marketing Environmental Liabilities and commenced funding remediation activities during the second quarter of 2012 related to such accruals. We do not expect to be reimbursed by Marketing for any such remediation activities except as a result of realizing a claim deriving from the Lukoil Complaint. We expect to continue to incur and fund costs associated with the Marketing bankruptcy proceedings and associated eviction proceedings as well as costs associated with repositioning properties previously leased to Marketing. We incurred \$3.1 million of lease origination costs in 2012, which deferred expense is recognized on a straight-line basis as a reduction of revenues from rental properties over the terms of the various leases. We expect to continue to incur operating expenses such as maintenance, repairs, real estate taxes, insurance and general upkeep related to these properties for vacant properties and properties subject to our month-to-month license agreements. In certain of our new leases, we have also agreed to co-invest with our tenants to fund capital improvements including replacing underground storage tanks and related equipment or renovating some of the properties previously leased to Marketing.

It is possible that our estimates for the Marketing Environmental Liabilities and other expenses relating to the properties previously leased to Marketing will be higher than the amounts we have accrued and that issues involved in re-letting or repositioning these properties may require significant management attention that would otherwise be devoted to our ongoing business. In addition, we increased our number of tenants significantly and are performing property related functions previously performed by Marketing, both of which have resulted in permanent increases in our annual operating expenses. The incurrence of these various expenses may materially negatively impact our cash flow and ability to pay dividends.

Our estimates, judgments, assumptions and beliefs regarding Marketing and the Master Lease affect the amounts reported in our financial statements and are subject to change. Actual results could differ from these estimates, judgments and assumptions and such differences could be material. If our actual expenditures for the Marketing Environmental Liabilities are greater than the amounts accrued, if we incur significant costs and operating expenses relating to the properties comprising the Master Lease portfolio; if the repositioning of the properties comprising the Master Lease portfolio leads to a protracted and expensive process for taking control



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and or re-letting our properties; if re-letting the properties comprising the Master Lease portfolio requires significant management attention that would otherwise be devoted to our ongoing business; if the Bankruptcy Court takes actions that are detrimental to our interests; if we are unable to re-let or sell the properties comprising the Master Lease portfolio at all or upon terms that are favorable to us; or if we change our estimates, judgments, assumptions and beliefs; our business, financial condition, revenues, operating expenses, results of operations, liquidity, ability to pay dividends and stock price may continue to be materially adversely affected or adversely affected to a greater extent than we have experienced. (For information regarding factors that could adversely affect us relating to our lessees, including Marketing, see Part II, Item 1A. Risk Factors. )

***Asset Impairment***

We perform an impairment analysis for the carrying amount of our properties in accordance with GAAP when indicators of impairment exist. During the years ended December 31, 2012 and 2011, we reduced the carrying amount to fair value, and recorded in continuing and discontinued operations, non-cash impairment charges aggregating \$13.9 million and \$20.2 million, respectively, where the carrying amount of the property exceeded the estimated undiscounted cash flows expected to be received during the assumed holding period and the estimated net sales value expected to be received at disposition. The non-cash impairment charges for the year ended December 31, 2012 were attributable to reductions in estimated selling prices and increases in the carrying value for certain properties in conjunction with recording environmental remediation obligations and related environmental asset retirement costs. The non-cash impairment charges for the year ended December 31, 2011 were attributable to recording the Marketing Environmental Liabilities in the fourth quarter of 2011, reductions in real estate valuations and reductions in the assumed holding period used to test for impairment and reductions in estimated selling prices.

***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 and generating cash sufficient to make required distributions to shareholders of at least 90% of our ordinary taxable income each year. In addition to measurements defined by accounting principles generally accepted in the United States of America ( GAAP ), our management also focuses on funds from operations available to common shareholders ( FFO ) and adjusted funds from operations available to common shareholders ( AFFO ) to measure our performance. FFO is generally considered to be an appropriate supplemental non-GAAP measure of the performance of REITs. In accordance with the National Association of Real Estate Investment Trusts' modified guidance for reporting FFO, we have restated reporting of FFO for all periods presented to exclude non-cash impairment charges. FFO is defined by the National Association of Real Estate Investment Trusts as net earnings before depreciation and amortization of real estate assets, gains or losses on dispositions of real estate (including such non-FFO items reported in discontinued operations), non-cash impairment charges, extraordinary items and cumulative effect of accounting change. Other REITs may use definitions of FFO and/or AFFO that are different than ours and; accordingly, may not be comparable.

We believe that FFO and AFFO are helpful to 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 fundamental operating performance. FFO excludes various items such as gains or losses from property dispositions and depreciation and amortization of real estate assets and non-cash impairment charges. In our case; however, GAAP net earnings and FFO typically include the impact of the Revenue Recognition Adjustments comprised of deferred rental revenue (straight-line rental revenue), the net amortization of above-market and below-market leases and income recognized from direct financing leases on our recognition of revenues from rental properties, as offset by the impact of related collection reserves. GAAP net earnings and FFO from time to time may also include property acquisition costs or other unusual or infrequently recurring items. 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 are recognized on a straight-line (or average) 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 revenue 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. Property acquisition costs are expensed, generally in the period when properties are acquired, and are not reflective of normal operations. Other unusual or infrequently occurring items are not reflective of normal operations.

Management pays particular attention to AFFO, a supplemental non-GAAP performance measure that we define as FFO less Revenue Recognition Adjustments, property acquisition costs and other unusual or infrequently occurring items. In management's view, AFFO provides a more accurate depiction than FFO of our fundamental operating performance related to: (i) the impact of scheduled rent increases from operating leases, net of related collection reserves; (ii) the rental revenue earned from acquired in-place leases; (iii) the impact of rent due from direct financing leases; (iv) our operating expenses (exclusive of direct expensed operating property acquisition costs); and (v) other unusual or infrequently occurring items. 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. For a reconciliation of FFO and AFFO, see Item 6. Selected Financial Data .



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***2012, 2011 and 2010 Acquisitions***

In 2012, we acquired fee or leasehold title to five gasoline station and convenience store properties in separate transactions for an aggregate purchase price of \$5.2 million.

On January 13, 2011, we acquired fee or leasehold title to 59 Mobil-branded gasoline station and convenience store properties and also took a security interest in six other Mobil-branded gasoline stations and convenience store properties in a sale/leaseback and loan transaction with CPD NY Energy Corp. ( CPD NY ), a subsidiary of Chestnut Petroleum Dist. Inc. Our total investment in the transaction was \$111.6 million including acquisition costs, which was financed entirely with borrowings under our revolving credit facility.

The properties were acquired or financed in a simultaneous transaction among ExxonMobil, CPD NY and us whereby CPD NY acquired a portfolio of 65 gasoline station and convenience stores from ExxonMobil and simultaneously completed a sale/leaseback of 59 of the acquired properties and leasehold interests with us. The lease between us, as lessor, and CPD NY, as lessee, governing the properties is a unitary triple-net lease agreement (the CPD Lease ), with an initial term of 15 years, and options for up to three successive renewal terms of ten years each. The CPD Lease requires CPD NY to pay a fixed annual rent for the properties (the Rent ), plus an amount equal to all rent due to third party landlords pursuant to the terms of third party leases. The Rent is scheduled to increase on the third anniversary of the date of the CPD Lease and on every third anniversary thereafter. As a triple-net lessee, CPD NY is required to pay all amounts pertaining to the properties subject to the CPD Lease, including taxes, assessments, licenses and permit fees, charges for public utilities and all governmental charges. Partial funding to CPD NY for the transaction was also provided by us under a secured, self-amortizing loan having a 10-year term (the CPD Loan ).

On March 31, 2011, we acquired fee or leasehold title to 66 Shell-branded gasoline station and convenience store properties in a sale/leaseback transaction with Nouria Energy Ventures I, LLC ( Nouria ), a subsidiary of Nouria Energy Group. Our total investment in the transaction was \$87.0 million including acquisition costs, which was financed entirely with borrowings under our revolving credit facility.

The properties were acquired in a simultaneous transaction among Motiva Enterprises LLC ( Shell ), Nouria and us whereby Nouria acquired a portfolio of 66 gasoline station and convenience stores from Shell and simultaneously completed a sale/leaseback of the 66 acquired properties and leasehold interests with us. The lease between us, as lessor, and Nouria, as lessee, governing the properties is a unitary triple-net lease agreement (the Nouria Lease ), with an initial term of 20 years, and options for up to two successive renewal terms of ten years each followed by one final renewal term of five years. The Nouria Lease requires Nouria to pay a fixed annual rent for the properties (the Rent ), plus an amount equal to all rent due to third party landlords pursuant to the terms of third party leases. The Rent is scheduled to increase on every annual anniversary of the date of the Nouria Lease. As a triple-net lessee, Nouria is required to pay all amounts pertaining to the properties subject to the Nouria Lease, including taxes, assessments, licenses and permit fees, charges for public utilities and all governmental charges.

In 2010, we purchased three gasoline station and convenience store properties in separate transactions for an aggregate purchase price of \$3.6 million.

**RESULTS OF OPERATIONS**

***Year ended December 31, 2012 compared to year ended December 31, 2011***

Revenues from rental properties included in continuing operations decreased by \$1.0 million to \$99.3 million for the year ended December 31, 2012, as compared to \$100.3 million for the year ended December 31, 2011. Revenues from rental properties include approximately \$73.0 million and \$45.5 million for the year ended December 31, 2012 and December 31, 2011, respectively, in rent contractually due or received from tenants other than Marketing including rent for May 2012 through December 2012 related to properties repositioned from the Master Lease. Revenues from rental properties included in continuing operations for the year ended December 31, 2012 include approximately \$20.1 million and, for the year ended December 31, 2011, \$52.6 million in rent contractually due or received from Marketing under the Master Lease (for which bad debt reserves of \$11.5 million and \$7.3 million were provided and are included in general and administrative expenses in our consolidated statement of operations for the years ended December 31, 2012 and 2011, respectively). The decrease in revenues from rental properties for the year ended December 31, 2012 was primarily due to the fact that we are generating less net revenue from the leasing of properties that were previously subject to the Master Lease than the contractual rent historically due from Marketing under the Master Lease. The decrease in revenues from rental properties was partially offset by rental income from properties we acquired from, and leased back to, Nouria Energy Ventures I, LLC ( Nouria ) in March 2011 and an increase in the real estate taxes we paid and billed to Marketing through April 30, 2012, the date the Master Lease was rejected, and from other tenants pursuant to triple-net leases thereafter. As a result of Marketing's bankruptcy filing, beginning in the first quarter of 2012, we began paying past due real estate taxes for 2011 and 2012, which taxes Marketing historically paid directly. Revenues from rental properties and rental property expense included \$11.3 million for the year ended December 31, 2012 as compared to \$6.6 million for the year ended December 31, 2011 for real estate taxes paid by us which were due



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from Marketing through the date the Master Lease was rejected as well as from other tenants who are contractually obligated to reimburse us for the payment of real estate taxes pursuant to the terms of triple-net lease agreements. The decrease in rent contractually due or received from Marketing and other tenants for the year ended December 31, 2012 was also due, to a lesser extent, the effect of dispositions and lease expirations partially offset by rent escalations.

In accordance with GAAP, we recognize rental revenue in amounts which vary from the amount of rent contractually due or received 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, net amortization of above-market and below-market leases and 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. Rental revenue includes Revenue Recognition Adjustments which increased rental revenue by \$4.4 million for the year ended December 31, 2012 and \$2.1 million for the year ended December 31, 2011.

Interest income from notes and mortgages receivable increased by \$0.2 million to \$2.9 million for the year ended December 31, 2012 as compared to \$2.7 million the year ended December 31, 2011 due to the issuance of \$4.6 million of mortgage notes in connection with 2012 property dispositions.

Rental property expenses included in continuing operations, which are primarily comprised of rent expense and real estate and other state and local taxes, were \$30.2 million for the year ended December 31, 2012 as compared to \$16.0 million for the year ended December 31, 2011. The increase in rental property expenses is principally due to additional maintenance expense and real estate tax expenses paid by us and reimbursable by our tenants related to properties and leasehold interests acquired in 2011 and real estate taxes historically paid by Marketing directly, which taxes we began paying in the first quarter of 2012. The reimbursement of real estate taxes from our tenants is included in revenues from rental properties in our consolidated statement of operations. We provide bad debt reserves for the taxes reimbursable from Marketing since do not expect to receive payment of taxes from the Marketing Estate.

Non-cash impairment charges of \$6.3 million are included in continuing operations for the year ended December 31, 2012 as compared to \$15.9 million recorded for the year ended December 31, 2011. Impairment charges are incurred when the carrying value of a property is reduced to fair value. The non-cash impairment charges for the year ended December 31, 2012 were attributable to reductions in estimated selling prices and increases in the carrying value for certain properties in conjunction with recording environmental remediation obligations and related environmental asset retirement costs. The non-cash impairment charges for the year ended December 31, 2011 were attributable to recording the Marketing Environmental Liabilities in the fourth quarter of 2011, reductions in real estate valuations and reductions in the assumed holding period used to test for impairment and reductions in estimated selling prices.

Environmental expenses included in continuing operations for the year ended December 31, 2012 decreased by \$4.8 million, to \$0.8 million, as compared to \$5.6 million for the year ended December 31, 2011. The decrease in environmental expenses for the year ended December 31, 2012 was due to a lower provision for litigation loss reserves and legal fees, which decreased by \$2.6 million for 2012, and a lower provision for estimated environmental remediation obligations, which decreased by an aggregate \$2.6 million to a credit of \$0.3 million for the year ended December 31, 2012, as compared to \$2.3 million for the year ended December 31, 2011, partially offset by a \$0.5 million increase in professional fees. Environmental expenses vary from period to period and, accordingly, undue reliance should not be placed on the magnitude or the direction of change in reported environmental expenses for one period as compared to prior periods.

General and administrative expenses included in continuing operations increased by \$7.0 million to \$29.1 million for the year ended December 31, 2012 as compared to \$22.1 million recorded for the year ended December 31, 2011. The increase in general and administrative expenses was principally due to an increase of \$5.9 million of reserve for bad debts primarily attributable to nonpayment of rent and real estate taxes due from Marketing that we do not expect to collect, \$2.6 million of legal and professional fees incurred related to Marketing's defaults of its obligations under the Master Lease and bankruptcy filing, higher employee related expenses recorded in the year ended December 31, 2012, partially offset by a \$2.0 million decrease in property acquisition costs.

As a result of Marketing's material monetary default under the Master Lease and Marketing's bankruptcy filing, in 2011 we concluded that it was probable that we would not receive the contractual lease payments when due from Marketing for the entire initial term of the Master Lease. Therefore, during 2011, we increased our reserve by recording additional non-cash allowances for deferred rent receivable, of which \$19.3 million is included in continuing operations. These non-cash allowances reduced our net earnings and funds from operations for the year ended December 31, 2011, but did not impact our cash flow from operating activities or adjusted funds from operations since the impact of the straight line method of accounting is not included in our determination of adjusted funds from operations.

Depreciation and amortization expense included in continuing operations for 2012 was \$12.5 million for the year ended December 31, 2012, as compared to \$9.5 million for the year ended December 31, 2011. The increase was primarily due to depreciation charges related to asset



retirement costs and properties acquired, partially offset by the effect of certain assets becoming fully depreciated, lease terminations and dispositions of real estate.

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As a result, total operating expenses decreased by approximately \$9.4 million for the year ended December 31, 2012, as compared to the year ended December 31, 2011.

Other income, net, included in income from continuing operations was \$0.6 million for the year ended December 31, 2012, as compared to \$0.016 million for the year ended December 31, 2011.

Interest expense was \$9.9 million for the year ended December 31, 2012, as compared to \$5.1 million for the year ended December 31, 2011. The increase was due to an increase in the weighted-average interest rate on borrowings outstanding, loan origination costs incurred in March 2012 amortized over the one year extension of our debt agreements, and higher average borrowings outstanding for the year ended December 31, 2012, as compared to the year ended December 31, 2011, partially offset by the expiration of the Swap Agreement on June 30, 2011.

As a result, earnings from continuing operations were \$13.8 million for the year ended December 31, 2012, as compared to \$9.4 million for the year ended December 31, 2011 and net earnings decreased by \$0.1 million to \$12.4 million for the year ended December 31, 2012, as compared to \$12.5 million for the year ended December 31, 2011.

We report as discontinued operations the results of approximately 111 properties accounted for as held for sale as of the end of the current period and certain properties disposed of during the periods presented. The operating results and gains from certain dispositions of real estate sold in 2012 have been classified as discontinued operations. The operating results of such properties for the years ended December 31, 2011 and 2010 have also been reclassified to discontinued operations to conform to the 2012 presentation. Earnings from discontinued operations decreased by \$4.4 million to a loss of \$1.4 million for the year ended December 31, 2012, as compared to earnings of \$3.0 million for the year ended December 31, 2011. The decrease was primarily due to lower rental revenue and higher operating costs, including higher impairment charges, partially offset by higher gains on dispositions of real estate. Gains from dispositions of real estate included in discontinued operations were \$6.8 million for the year ended December 31, 2012 and \$0.9 million for the year ended December 31, 2011. For the year ended December 31, 2012, there were 54 property dispositions. For the year ended December 31, 2011, there were 10 property dispositions. Gains on disposition of real estate and impairment charges vary from period to period and accordingly, undue reliance should not be placed on the magnitude or the directions of change in reported gains and impairment charges for one period as compared to prior periods.

For the year ended December 31, 2012, FFO decreased by \$8.9 million to \$33.2 million, as compared to \$42.1 million for the year ended December 31, 2011, and AFFO decreased by \$33.9 million to \$28.8 million, as compared to \$62.7 million for the prior year. The decrease in FFO for the year ended December 31, 2012 was primarily due to the changes in net earnings but exclude a \$6.3 million decrease in impairment charges, a \$3.4 million increase in depreciation and amortization expense and a \$5.9 million increase in gains on dispositions of real estate. The decrease in AFFO for the year ended December 31, 2012 also exclude a \$19.8 million decrease in the allowance for deferred rental revenue, a \$2.0 million decrease in acquisition costs and a \$3.2 million increase in Rental Revenue Adjustments which cause our reported revenues from rental properties to vary from the amount of rent payments contractually due or received by us during the periods presented (which are included in net earnings and FFO but are excluded from AFFO).

Diluted earnings per share was \$0.37 per share for the years ended December 31, 2012 and 2011. Diluted FFO per share for the year ended December 31, 2012 was \$0.99 per share, as compared to \$1.26 per share for the year ended December 31, 2011. Diluted AFFO per share for the year ended December 31, 2012 was \$0.86 per share, as compared to \$1.88 per share for the year ended December 31, 2011.

***Year ended December 31, 2011 compared to year ended December 31, 2010***

Revenues from rental properties included in continuing operations were \$100.3 million for the year ended December 31, 2011, as compared to \$78.2 million for the year ended December 31, 2010. Revenues from rental properties include approximately \$52.6 million and \$50.1 million in rent contractually due or received for the years ended December 31, 2011 and December 31, 2010, respectively, from properties leased to Marketing under the Master Lease and approximately \$45.5 million and \$26.4 million for the years ended December 31, 2011 and 2010, respectively, contractually due or received from other tenants. The increase in rent contractually due or received from other tenants for the year ended December 31, 2011 was primarily due to rental income from properties we acquired from, and leased back to, CPD NY in January 2011 and Nouria in March 2011. The increase in the rent contractually due or received from Marketing for the year ended December 31, 2011 was primarily due to an increase in the real estate taxes we pay (or accrue) and bill to Marketing. As a result of Marketing's bankruptcy filing, beginning in the first quarter of 2012, we began paying past due real estate taxes for 2011 and 2012, which taxes Marketing historically paid directly. Revenues from rental properties and rental property expense included \$6.6 million for the year ended December 31, 2011 as compared to \$1.8 million for the year ended December 31, 2010 for real estate taxes paid (or accrued) by us which were due from Marketing as well as from other



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tenants who are contractually obligated to reimburse us for the payment of real estate taxes pursuant to the terms of triple-net lease agreements.

In accordance with GAAP, we recognize rental revenue in amounts which vary from the amount of rent contractually due or received 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, net amortization of above-market and below-market leases and 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. Rental revenue includes Revenue Recognition Adjustments which increased rental revenue by \$2.1 million for the year ended December 31, 2011 and \$1.7 million for the year ended December 31, 2010.

Interest income from notes and mortgages receivable increased by \$2.6 million to \$2.7 million for the year ended December 31, 2011 as compared to \$0.1 million for the year ended December 31, 2010 primarily due to the issuance of \$30.4 million of notes receivable substantially all in connection with the acquisitions completed in 2011.

Rental property expenses included in continuing operations, which are primarily comprised of rent expense and real estate and other state and local taxes, were \$16.0 million for the year ended December 31, 2011 as compared to \$10.1 million for the year ended December 31, 2010. The increase in rental property expenses is principally due to additional real estate tax and rent expenses paid by us and reimbursable by our tenants related to properties and leasehold interests acquired in 2011 and accrued past due real estate taxes historically paid by Marketing directly, which taxes we began paying in the first quarter of 2012. The reimbursement of such expenses from our tenants is included in revenues from rental properties in our consolidated statement of operations. We provided a bad debt reserve for the taxes reimbursable from Marketing since do not expect to receive payment of taxes from the Marketing Estate.

Non-cash impairment charges of \$15.9 million are included in continuing operations for the year ended December 31, 2011 as compared to no impairment charges recorded for the year ended December 31, 2010. The non-cash impairment charges related to the properties leased to Marketing were primarily attributable to significant increases in the carrying value for certain of the properties in conjunction with recording the Marketing Environmental Liabilities. In the fourth quarter of 2011, we accrued \$47.9 million as the aggregate Marketing Environmental Liabilities since we could no longer assume that Marketing will be able to meet its environmental remediation obligations and its obligations to remove underground storage tanks at the end of their useful life. In accordance with GAAP, we increased the carrying value for each of the affected properties by the amount of the related estimated environmental obligation which resulted in simultaneously recording impairment charges in continuing operations and discontinued operations aggregating \$17.0 million where the increased carrying value of the property exceeded its estimated fair value. The non-cash impairment charges recorded earlier in the year resulted from reductions in real estate valuations and the reductions in the assumed holding period used to test for impairment.

Environmental expenses included in continuing operations for the year ended December 31, 2011 increased by \$0.2 million, to \$5.6 million, as compared to \$5.4 million for the year ended December 31, 2010. The increase in net environmental expenses for the year ended December 31, 2011 was primarily due to a higher provision for litigation loss reserves and legal fees which increased by \$0.6 million for 2011, partially offset by a lower provision for estimated environmental remediation obligations which decreased by an aggregate \$0.4 million to \$2.3 million for the year ended December 31, 2011, as compared to \$2.7 million for the year ended December 31, 2010. Environmental expenses vary from period to period and, accordingly, undue reliance should not be placed on the magnitude or the direction of change in reported environmental expenses for one period as compared to prior periods.

General and administrative expenses included in continuing operations were \$22.1 million for the year ended December 31, 2011 as compared to \$8.2 million recorded for the year ended December 31, 2010. The increase in general and administrative expenses was principally due to \$7.6 million of reserve for bad debts primarily attributable to nonpayment of pre-petition rent and real estate taxes due from Marketing that we do not expect to collect, \$2.0 million of property acquisition costs, \$1.5 million of legal and professional fees incurred related to Marketing's defaults of its obligations under the Master Lease and bankruptcy filing and higher employee related expenses and legal fees recorded in the year ended December 31, 2011.

As a result of Marketing's material monetary default under the Master Lease and Marketing's bankruptcy filing, we previously concluded that it was probable that we would not receive the contractual lease payments when due from Marketing for the entire initial term of the Master Lease. Therefore, during 2011, we increased our reserve by recording additional non-cash allowances for deferred rent receivable of \$19.3 million. These non-cash allowances reduced our net earnings and funds from operations for the year ended December 31, 2011, but did not impact our cash flow from operating activities or adjusted funds from operations since the impact of the straight line method of accounting is not included in our determination of adjusted funds from operations.

Depreciation and amortization expense included in continuing operations was \$9.5 million for the year ended December 31, 2011, as compared to \$9.0 million for the year ended December 31, 2010. The increase was primarily due to depreciation charges related to asset retirement costs

and properties acquired, partially offset by the effect of certain assets becoming fully depreciated, lease terminations and dispositions of real estate.

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As a result, total operating expenses increased by approximately \$55.8 million for the year ended December 31, 2011, as compared to the year ended December 31, 2010.

Other income, net, included in income from continuing operations was \$0.016 million for the year ended December 31, 2011, as compared to \$0.2 million for the year ended December 31, 2010.

Interest expense was \$5.1 million for each of 2011 and 2010. While there was no significant change in interest expense recorded for the year ended December 31, 2011 as compared to the prior year period, the weighted average interest rate on borrowings outstanding decreased due to changes in the relative amounts of debt outstanding under our borrowing agreements and average borrowings outstanding for the year ended December 31, 2011 were higher than average borrowings outstanding for the year ended December 31, 2010. The average borrowings outstanding in 2011 were impacted by, among other things, \$113.0 million drawn under a revolving credit facility to finance the transaction with CPD NY, \$92.1 million drawn under a revolving credit facility to finance the transaction with Nouria and the repayment of borrowings outstanding under our revolving credit facility with substantially all of the net proceeds of \$92.0 million received in 2011 from a 3.45 million share common stock offering.

As a result, earnings from continuing operations decreased by \$31.5 million to \$9.4 million for the year ended December 31, 2011, as compared to \$40.9 million for the year ended December 31, 2010 and net earnings decreased by \$39.2 million to \$12.5 million for the year ended December 31, 2011, as compared to \$51.7 million for the year ended December 31, 2010.

The operating results and gains from certain dispositions of real estate sold in 2012 have been classified as discontinued operations. The operating results of such properties for the year ended December 31, 2011 and 2010 have also been reclassified to discontinued operations to conform to the 2012 presentation. Earnings from discontinued operations decreased by \$7.8 million to \$3.0 million for the year ended December 31, 2011, as compared to \$10.8 million for the year ended December 31, 2010. The decrease was primarily due to lower earnings from operating activities and lower gains on dispositions of real estate. Gains from dispositions of real estate included in discontinued operations were \$0.9 million for the year ended December 31, 2011 and \$1.7 million for the year ended December 31, 2010. For the year ended December 31, 2011, there were 10 property dispositions. For the year ended December 31, 2010, there were six property dispositions. Other income, net and gains on disposition of real estate vary from period to period and accordingly, undue reliance should not be placed on the magnitude or the directions of change in reported gains for one period as compared to prior periods.

For the year ended December 31, 2011, FFO decreased by \$17.6 million to \$42.1 million, as compared to \$59.7 million for the year ended December 31, 2010, and AFFO increased by \$4.5 million to \$62.7 million, as compared to \$58.2 million for the prior year. The decrease in FFO for the year ended December 31, 2011 was primarily due to the changes in net earnings but excludes a \$20.2 million increase in impairment charges, a \$0.6 million increase in depreciation and amortization expense and a \$0.7 million decrease in gains on dispositions of real estate. The increase in AFFO for the year ended December 31, 2011 also excludes a \$19.8 million increase in the allowance for deferred rental revenue, a \$2.0 million increase in acquisition costs and a \$0.3 million decrease in Rental Revenue Adjustments which cause our reported revenues from rental properties to vary from the amount of rent payments contractually due or received by us during the periods presented (which are included in net earnings and FFO but are excluded from AFFO).

The calculations of net earnings per share, FFO per share, and AFFO per share for the year ended December 31, 2011 were impacted by an increase in the weighted average number of shares outstanding as a result of the issuance of shares of common stock in 2010 and 2011. The weighted average number of shares outstanding in our per share calculations increased by 5.2 million shares, or 18.7%, for the year ended December 31, 2011, as compared to the prior year period. Accordingly, the percentage or direction of the changes in net earnings, FFO and AFFO discussed above may differ from the changes in the related per share amounts. Diluted earnings per share was \$0.37 per share for the year ended December 31, 2011 as compared to \$1.84 per share for the year ended December 31, 2010. Diluted FFO per share for the year ended December 31, 2011 was \$1.26 per share, as compared to \$2.13 per share for the year ended December 31, 2010. Diluted AFFO per share for the year ended December 31, 2011 was \$1.88 per share, as compared to \$2.08 per share for the year ended December 31, 2010.

**LIQUIDITY AND CAPITAL RESOURCES**

Our principal sources of liquidity are the cash flows from our operations, funds available under our Credit Agreement that matures in August 2015 (described below) and available cash and cash equivalents. Management believes that our operating cash needs for the next twelve months can be met by cash flows from operations, borrowings under our Credit Agreement and available cash and cash equivalents. Net cash flow provided by operating activities reported on our consolidated statement of cash flows for 2012, 2011 and 2010 were \$15.9 million, \$60.8 million and \$57.1 million, respectively. Our business operations and liquidity is dependent on our ability to generate cash flow from our properties.



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**Table of Contents*****Debt Refinancing***

As of December 31, 2012, we were a party to a \$175 million amended and restated senior secured revolving credit agreement with a group of commercial banks led by JPMorgan Chase Bank, N.A. and a \$25 million amended term loan agreement with TD Bank, both of which were scheduled to mature in March 2013. As of December 31, 2012, borrowings under the credit agreement were \$150.3 million bearing interest at a rate of 3.25% per annum and borrowings under the term loan agreement were \$22.0 million bearing interest at a rate of 3.50% per annum. On February 25, 2013, the borrowings then outstanding under such credit agreement and term loan agreement were repaid with cash on hand and proceeds of the Credit Agreement and the Prudential Loan Agreement (both defined below).

***Credit Agreement***

On February 25, 2013, we entered into a \$175 million senior secured revolving credit agreement (the *Credit Agreement*) with a group of commercial banks led by JPMorgan Chase Bank, N.A. (the *Bank Syndicate*), which is scheduled to mature in August 2015. Subject to the terms of the Credit Agreement, we have the option to extend the term of the Credit Agreement for one additional year to August 2016. The Credit Agreement allocates \$25 million of the total Bank Syndicate commitment to a term loan and \$150 million to a revolving credit facility. Subject to the terms of the Credit Agreement, we have the option to increase by \$50 million the amount of the revolving credit facility to \$200 million. The Credit Agreement permits borrowings at an interest rate equal to the sum of a base rate plus a margin of 1.50% to 2.00% or a LIBOR rate plus a margin of 2.50% to 3.00% based on our leverage at the end of each quarterly reporting period. The annual commitment fee on the undrawn funds under the Credit Agreement is 0.30% to 0.40% based on our leverage at the end of each quarterly reporting period. The Credit Agreement does not provide for scheduled reductions in the principal balance prior to its maturity.

The Credit Agreement provides for security in the form of, among other items, mortgage liens on certain of our properties. The parties to the Credit Agreement and the Prudential Loan Agreement (as defined below) share the security pursuant to the terms of an inter-creditor agreement. The Credit Agreement contains customary financial covenants such as loan to value, leverage and 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 Credit Agreement contains customary events of default, including default under the Prudential Loan Agreement, change of control and failure to maintain REIT status. Any event of default, if not cured or waived, would increase by 200 basis points (2.00%) the interest rate we pay under the Credit Agreement and prohibit us from drawing funds against the Credit Agreement and could result in the acceleration of our indebtedness under the Credit Agreement and could also give rise to an event of default and could result in the acceleration of our indebtedness under the Prudential Loan Agreement. We may be prohibited from drawing funds against the revolving credit facility if there is a material adverse effect on our business, assets, prospects or condition.

***Prudential Loan Agreement***

On February 25, 2013, we entered into a \$100 million senior secured long-term loan agreement with the Prudential Insurance Company of America (the *Prudential Loan Agreement*), which matures in February 2021. The Prudential Loan Agreement bears interest at 6.00%. The Prudential Loan Agreement does not provide for scheduled reductions in the principal balance prior to its maturity. The parties to the Credit Agreement and the Prudential Loan Agreement share the security described above pursuant to the terms of an inter-creditor agreement. The Prudential Loan Agreement contains customary financial covenants such as loan to value, leverage and 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 Prudential Loan Agreement contains customary events of default, including default under the Credit Agreement and failure to maintain REIT status. Any event of default, if not cured or waived, would increase by 200 basis points (2.00%) the interest rate we pay under the Prudential Loan Agreement and could result in the acceleration of our indebtedness under the Prudential Loan Agreement and could also give rise to an event of default and could result in the acceleration of our indebtedness under our Credit Agreement.

***Property Acquisitions and Capital Expenditures***

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. 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. Our property acquisitions and capital expenditures for the year ended December 31, 2012, 2011 and 2010 amounted to \$4.1 million, \$167.5 million and \$4.7 million, respectively, substantially all of which was for acquisitions. We are evaluating potential capital expenditures for properties that were previously subject to the Master Lease with Marketing and which are not currently subject to long-term leases. We have no current plans to make material improvements to any of our properties other than the properties previously subject to the Master Lease with Marketing. However, our tenants frequently make improvements to the properties leased from us at their expense. In certain of our new leases, we have committed to co-invest as much as \$14.1 million in capital improvements in our properties. (For additional information regarding capital expenditures related to the properties subject to the Master Lease, see *Item 2. Properties*). To the extent that our sources of liquidity are not sufficient to fund acquisitions and capital expenditures, we will



require other sources of capital, which may or may not be available on favorable terms or at all.

**Table of Contents****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. The Internal Revenue Service ( IRS ) has allowed the use of a procedure, as a result of which we could satisfy the REIT income distribution requirement by making a distribution on our common stock comprised of (i) shares of our common stock having a value of up to 80% of the total distribution and (ii) cash in the remaining amount of the total distribution, in lieu of paying the distribution entirely in cash. In order to use this procedure, we would need to seek and obtain a private letter ruling of the IRS to the effect that the procedure is applicable to our situation. Without obtaining such a private letter ruling, we cannot provide any assurance that we will be able to satisfy our REIT income distribution requirement by making distributions payable in whole or in part in shares of our common stock. 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 IRS. Payment of dividends is subject to market conditions, our financial condition, including but not limited to, our continued compliance with the provisions of the Credit Agreement and the Prudential Loan Agreement and other factors, and therefore is not assured. In particular, our Credit Agreement and Prudential Loan Agreement prohibit the payment of dividends during certain events of default. Cash dividends paid to our shareholders aggregated \$8.4 million, \$63.4 million and \$52.3 million, for the years ended December 31, 2012, 2011 and 2010, respectively. We reduced our quarterly dividend rate to \$0.125 per share in the quarter ended June 30, 2012. In February 2013, we increased our quarterly dividend rate to \$0.20 per share. There can be no assurance that we will be able to continue to pay cash dividends at the rate of \$0.20 per share per quarter in cash or a combination of cash and our stock, if at all.

**CONTRACTUAL OBLIGATIONS**

Our significant contractual obligations and commitments as of December 31, 2012 were comprised of borrowings under an amended credit agreement and an amended term loan agreement, operating lease payments due to landlords, estimated environmental remediation expenditures, co-investing with our tenants in capital improvements at our properties and our obligations pursuant to the Litigation Funding Agreement. We repaid our debt outstanding as of December 31, 2012 with borrowings under the Credit Agreement and the Prudential Loan Agreement entered into in February 2013. The aggregate maturity of the Credit Agreement and the Prudential Loan Agreement, is as follows: 2015 \$71.9 million and 2021 \$100 million.

In addition, as a REIT, we are required to pay dividends equal to at least 90% of our taxable income in order to continue to qualify as a REIT. Our contractual obligations and commitments as of December 31, 2012 are summarized below (in thousands):

|  | TOTAL             | LESS<br>THAN-<br>ONE YEAR | ONE-TO<br>THREE<br>YEARS | THREE<br>TO<br>FIVE<br>YEARS | MORE<br>THAN<br>FIVE<br>YEARS |
|--|-------------------|---------------------------|--------------------------|------------------------------|-------------------------------|
| Operating leases                                     | \$ 33,398         | \$ 7,826                  | \$ 12,461                | \$ 7,245                     | \$ 5,866                      |
| Borrowings under the prior credit agreement (a)      | 150,290           | 150,290                   |                          |                              |                               |
| Borrowings under the prior term loan agreement (a)   | 22,030            | 22,030                    |                          |                              |                               |
| Estimated environmental remediation expenditures (b) | 46,150            | 16,223                    | 15,790                   | 5,092                        | 9,045                         |
| Capital improvements (c)                             | 14,080            |                           | 14,080                   |                              |                               |
| Litigation Funding Agreement                         | 4,753             | 4,753                     |                          |                              |                               |
| <b>Total</b>   | <b>\$ 270,701</b> | <b>\$ 201,122</b>         | <b>\$ 28,251</b>         | <b>\$ 12,337</b>             | <b>\$ 14,911</b>              |

- (a) Excludes related interest payments. (See Liquidity and Capital Resources above and Item 7A. Quantitative and Qualitative Disclosures About Market Risk for additional information.) We repaid our debt outstanding as of December 31, 2012 with cash on hand and proceeds from the Credit Agreement and Prudential Loan Agreement entered into in February 2013.
- (b) Estimated environmental remediation expenditures have been adjusted for inflation and discounted to present value.
- (c) The actual timing of co-investing with our tenants in capital improvements is dependent on the timing of such capital improvement projects and the terms of our leases. We expect that substantially all of such credits will be issued within five years.

Generally, the leases with our tenants are triple-net leases, with the tenant responsible for the operations conducted at these properties and for the payment of taxes, maintenance, repair, insurance, environmental remediation and other operating expenses.

We have no significant contractual obligations not fully recorded on our consolidated balance sheets or fully disclosed in the notes to our consolidated financial statements. We have no off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated by the Exchange Act.

#### **CRITICAL ACCOUNTING POLICIES AND ESTIMATES**

The consolidated financial statements included in this Annual Report on Form 10-K have been prepared in conformity with accounting principles generally accepted in the United States of America. The preparation of financial statements in accordance with GAAP requires management to make estimates, judgments and assumptions that affect the amounts reported in its financial statements. Although we have made estimates, judgments and assumptions regarding future uncertainties relating to the information included in our 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.

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Estimates, judgments and assumptions underlying the accompanying consolidated financial statements include, but are not limited to, receivables, deferred rent receivable, income under direct financing leases, environmental remediation obligations, real estate, depreciation and amortization, impairment of long-lived assets, litigation, accrued liabilities, environmental remediation obligations, income taxes and allocation of the purchase price of properties acquired to the assets acquired and liabilities assumed. The information included in our 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 of Notes to Consolidated Financial Statements in Item 8. Financial Statements and Supplementary Data Notes to Consolidated Financial Statements. We believe that the more critical of our accounting policies relate to revenue recognition and deferred rent receivable and related reserves, impairment of long-lived assets, income taxes, environmental costs, allocation of the purchase price of properties acquired to the assets acquired and liabilities assumed and litigation as described below:

**Revenue recognition** We earn revenue primarily from operating leases with our tenants. We recognize income under leases with our tenants, on the straight-line method, which effectively recognizes contractual lease payments evenly over the current term of the leases. 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 revenue from rental properties over the remaining lives of the in-place leases. A critical assumption in applying the straight-line accounting method is that the tenant will make all contractual lease payments during the current lease term and that the net deferred rent receivable of \$12.4 million recorded as of December 31, 2012 will be collected when the payment is due, in accordance with the annual rent escalations provided for in the leases. Historically our tenants, other than Marketing, with leases that are material to our financial results have generally made rent payments when due. However, we may be required to reverse, or provide reserves for a portion of the recorded deferred rent receivable if it becomes apparent that the tenant may not make all of its contractual lease payments when due during the current term of the lease. The straight-line method requires that rental income related to those properties for which a reserve was specifically provided is effectively recognized in subsequent periods when payment is due under the contractual payment terms. (See General Marketing and the Master Lease above for additional information.)

**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. Net investment in direct financing leases represents the investments in leased assets accounted for as direct financing leases. The investments are reduced by the receipt of lease payments, net of interest income earned and amortized over the life of the leases.

**Impairment of long-lived assets** Real estate assets represent long-lived assets for accounting purposes. We review the recorded value of long-lived assets for impairment in value whenever any events or changes in circumstances indicate that the carrying amount of the assets may not be recoverable. We may become aware of indicators of potentially impaired assets upon tenant or landlord lease renewals, upon receipt of notices of potential governmental takings and zoning issues, or upon other events that occur in the normal course of business that would cause us to review the operating results of the property. We believe our real estate assets are not carried at amounts in excess of their estimated net realizable fair value amounts.

**Income taxes** Our financial results generally do not reflect provisions for current or deferred federal income taxes since we elected to be treated as a REIT under the federal income tax laws effective January 1, 2001. Our intention is to operate in a manner that will allow us to continue to be treated as a REIT and, as a result, we do not expect to pay substantial corporate-level federal income taxes. Many of the REIT requirements; however, are highly technical and complex. If we were to fail to meet the requirements, we may be subject to federal income tax, excise taxes, penalties and interest or we may have to pay a deficiency dividend to eliminate any earnings and profits that were not distributed. Certain states do not follow the federal REIT rules and we have included provisions for these taxes in rental property expenses.

**Environmental remediation obligations** We provide for the estimated fair value of future environmental remediation obligations when it is probable that a liability has been incurred and a reasonable estimate of fair value can be made. (See Environmental Matters below for additional information). Environmental liabilities net of related recoveries are measured based on their expected future cash flows which have been adjusted for inflation and discounted to present value. Since environmental exposures are difficult to assess and estimate and knowledge about these liabilities is not known upon the occurrence of a single event, but rather is gained over a continuum of events, we believe that it is appropriate that our accrual estimates are adjusted as the remediation treatment progresses, as circumstances change and as environmental contingencies become more clearly defined and reasonably estimable. A critical assumption in accruing for these liabilities is that the state environmental laws and regulations will be administered and enforced in the future in a manner that is consistent with past practices. Environmental liabilities are estimated net of recoveries of environmental costs from state UST remediation funds, with respect to past and future spending based on estimated recovery rates developed from our experience with the funds when such recoveries are considered probable. A critical assumption in accruing for these recoveries is that the state UST fund programs will be administered and funded in the future in a manner that is consistent with past practices and that future environmental spending will be eligible for reimbursement at historical rates under these programs. We accrue environmental liabilities based on our share of responsibility as defined in our lease contracts with our tenants



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and under various other agreements with others or if circumstances indicate that the counter-party may not have the financial resources to pay its share of the costs. 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 may ultimately be responsible to pay for environmental liabilities as the property owner if our tenants or other counter-parties fail to pay them. In certain environmental matters the effect on future financial results is not subject to reasonable estimation because considerable uncertainty exists both in terms of the probability of loss and the estimate of such loss. The ultimate liabilities resulting from such lawsuits and claims, if any, may be material to our results of operations in the period in which they are recognized.

**Litigation** Legal fees related to litigation are expensed as legal services are performed. We provide for litigation reserves, including certain environmental litigation. (See **Environmental Matters** below for additional information), when it is probable that a liability has been incurred and a reasonable estimate of the liability can be made. If the estimate of the liability can only be identified as a range, and no amount within the range is a better estimate than any other amount, the minimum of the range is accrued for the liability.

**Allocation of the purchase price of properties acquired** Upon acquisition of real estate and leasehold interests, 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 purchase price to the applicable assets and liabilities.

## **ENVIRONMENTAL MATTERS**

### ***General***

We are subject to numerous existing 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 include installing, operating, maintaining and decommissioning remediation systems, monitoring contamination and governmental agency reporting incurred in connection with contaminated properties. We seek reimbursement from state UST remediation funds related to these environmental costs where available. In July 2012, we purchased for \$3.1 million a ten-year pollution legal liability insurance policy covering all of our properties for pre-existing 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 is to obtain protection predominantly for significant events. No assurances can be given that we will obtain a net financial benefit from this investment. Historically we did not maintain pollution legal liability insurance to protect from potential future claims related to known and unknown environmental liabilities.

We enter into leases and various other agreements which allocate responsibility for known and unknown environmental liabilities by establishing the percentage and method of allocating responsibility between the parties. In accordance with the leases with certain tenants, we have agreed to bring the leased properties with known environmental contamination to within applicable standards, and to either regulatory or contractual closure ( **Closure** ). Generally, upon achieving **Closure** at each individual property, our environmental liability under the lease for that property will be satisfied and future remediation obligations will be the responsibility of our tenant.

Generally, our tenants are directly responsible to pay for: (i) the retirement and decommissioning or removal of USTs and other equipment, (ii) remediation of environmental contamination they cause and compliance with various environmental laws and regulations as the operators of our properties, and (iii) environmental liabilities allocated to them under the terms of our leases and various other agreements. We are contingently liable for these obligations in the event that our tenants do not satisfy their responsibilities. Under the Master Lease, Marketing was responsible to pay for the retirement and decommissioning or removal of USTs at the end of their useful life or earlier if circumstances warranted as well as all environmental liabilities discovered during the term of the Master Lease, including: (i) remediation of environmental contamination Marketing caused and compliance with various environmental laws and regulations as the operator of our properties, and (ii) known and unknown environmental liabilities allocated to Marketing under the terms of the Master Lease and various other agreements with us relating to Marketing's business and the properties it leased from us (collectively the **Marketing Environmental Liabilities** ). A liability has not been accrued for obligations that are the responsibility of our tenants (other than the **Marketing Environmental Liabilities** accrued in the fourth quarter of 2011) based on our tenants' history of paying such obligations and/or our assessment of their financial ability and intent to pay their share of such costs. 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.

In the fourth quarter of 2011, since we could no longer assume that Marketing would be able to meet its environmental remediation obligations at 246 properties and its obligations to remove all underground storage tanks at the end of their useful life or earlier if circumstances warrant, we accrued \$47.9 million as the aggregate **Marketing Environmental Liabilities**. In conjunction with recording the **Marketing Environmental**

Liabilities, we increased the carrying value for each of the properties by the amount of the related estimated environmental obligation and simultaneously recorded impairment charges aggregating \$17.0 million where the accumulation of asset retirement costs increased the carrying value of the property above its estimated fair value.

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As part of certain triple-net leases whose term commenced through December 31, 2012, 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 life or earlier if circumstances warranted was fully or partially transferred to our new tenants. Accordingly, during the year ended December 31, 2012, we removed \$11.2 million of asset retirement obligations and \$9.8 million of net asset retirement costs related to USTs from our balance sheet. The net amount of \$1.4 million is recorded as deferred rental revenue and will be recognized as additional revenues from rental properties over the terms of the various leases. (See note 2 for additional information.)

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 various other agreements if we determine that it is probable that the counterparty will not meet its environmental obligations. 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.

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 the best 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.

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. 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.

Environmental remediation obligations are initially measured at fair value based on their expected future net cash flows which have been adjusted for inflation and discounted to present value. As of December 31, 2012, 2011 and 2010, we had accrued \$46.2 million, \$57.7 million and \$10.9 million, respectively, as our best estimate of the fair value of reasonably estimable environmental remediation obligations net of estimated recoveries and obligations to remove USTs. Environmental liabilities are accreted for the change in present value due to the passage of time and, accordingly, \$3.2 million, \$0.9 million and \$0.8 million of net accretion expense was recorded for the years ended December 31, 2012, 2011 and 2010, respectively, which is included in environmental expenses. In addition, during the year ended December 31, 2012 we recorded credits aggregating \$4.2 million to environmental expenses and earnings from discontinued operating activities 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 provisions for environmental litigation loss reserves.

During the year ended December 31, 2012 and 2011, we increased the carrying value of certain of our properties by \$5.7 million and \$47.9 million, respectively, due to increases in estimated remediation costs. We simultaneously record impairment charges where the increased carrying value of the property exceeds its estimated fair value. Capitalized asset retirement costs are being depreciated over the estimated remaining life of the underground storage tank, a ten year period if the increase in carrying value 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 included in our consolidated statements of operations for the year ended December 31, 2012 and 2011 includes \$5.4 million and \$0.9 million, respectively, of depreciation related to capitalized asset retirement costs of \$23.5 million and \$35.3 million as of December 31, 2012 and 2011, respectively.

We cannot predict what environmental legislation or regulations may be enacted in the future or how existing laws or regulations will be administered or interpreted with respect to products or activities to which they have not previously been applied. We cannot predict if state UST fund programs will be administered and funded in the future in a manner that is consistent with past practices and if future environmental spending will continue to be eligible for reimbursement at historical recovery rates under these programs. Compliance with more stringent laws or regulations, as well as more vigorous enforcement policies of the regulatory agencies or stricter interpretation of existing laws, which may develop in the future, could have an adverse effect on our financial position, or that of our tenants, and could require substantial additional expenditures for future remediation.



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In view 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 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 financial statements as they become probable and a reasonable estimate of fair value can be made. Future environmental expenses 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 December 31, 2012 and December 31, 2011, we had accrued \$3.6 million and \$4.2 million, respectively, 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 the our Newark, New Jersey Terminal and Lower Passaic River and the MTBE multi-district litigation case, in particular, could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price. (See Item 3. Legal Proceedings for additional information with respect to these and other pending environmental lawsuits and claims.)

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

In September 2003, we received a directive (the Directive) from the State of New Jersey Department of Environmental Protection (the NJDEP) notifying us that we are one of approximately 66 potentially responsible parties for natural resource damages resulting from discharges of hazardous substances into the Lower Passaic River. The Directive calls for an assessment of the natural resources that have been injured by the discharges into the Lower Passaic River and interim compensatory restoration for the injured natural resources. There has been no material activity with respect to the NJDEP Directive since early after its issuance. The responsibility for the alleged damages, the aggregate cost to remediate the Lower Passaic River, the amount of natural resource damages and the method of allocating such amounts among the potentially responsible parties have not been determined. Effective May 2007, the United States Environmental Protection Agency (EPA) entered into an Administrative Settlement Agreement and Order on Consent (AOC) with over 70 parties comprising a Cooperating Parties Group (CPG) (many of whom are also named in the Directive) who have collectively agreed to perform a Remedial Investigation and Feasibility Study (RI/FS) for the Lower Passaic River. We are a party to the AOC and are a member of the CPG. 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, and is scheduled to be completed in or about 2015. On June 18, 2012, all members of the CPG except Occidental Chemical Corporation (Occidental) entered into an Administrative Settlement Agreement and Order on Consent (10.9 AOC) to perform certain remediation activities, including removal and capping of sediments at the river mile 10.9 area and certain testing. Similar to the RI/FS work, the CPG entered into an interim allocation for the costs of the river mile 10.9 work. The EPA issued a Unilateral Order to Occidental directing Occidental to participate and contribute to the cost of the river mile 10.9 work and discussions regarding Occidental's participation in the river mile 10.9 work are ongoing. Concurrently, the EPA is preparing a proposed Focused Feasibility Study (FFS) that the EPA claims will address sediment issues in the lower eight miles of the Lower Passaic River. The RI/FS and 10.9 AOC do not resolve liability issues for remedial work or restoration of, or compensation for, natural resource damages to the Lower Passaic River, which are not known at this time.

In a related action, in December 2005, the State of New Jersey through various state agencies brought suit against certain companies which the State alleges are responsible for various categories of past and future damages resulting from discharges of hazardous substances to the Passaic River. In February 2009, certain of these defendants filed third party complaints against approximately 300 additional parties, including us, seeking contribution for such parties' proportionate share of response costs, cleanup and other damages, based on their relative contribution to pollution of the Passaic River and adjacent bodies of water. We believe that ChevronTexaco is contractually obligated to indemnify us, pursuant to an indemnification agreement, for most if not all of the conditions at the property identified by the NJDEP and the EPA. Accordingly, our ultimate legal and financial liability, if any, cannot be estimated with any certainty at this time.

#### *MTBE Litigation*

During 2011, we were defending against one remaining lawsuit of many brought by or on behalf of private and public water providers and governmental agencies. These cases alleged (and, as described below with respect to one remaining case, continue to allege) various theories of liability due to contamination of groundwater with methyl tertiary butyl ether (a fuel derived from methanol, commonly referred to as MTBE) as the basis for claims seeking compensatory and punitive damages, and name as defendant approximately 50 petroleum refiners, manufacturers, distributors and retailers of MTBE, or gasoline containing MTBE. During 2010, we agreed to, and subsequently paid, \$1.7 million to settle two plaintiff classes covering 52 pending cases. Presently, we remain a defendant in one MTBE case involving multiple locations throughout the State of New Jersey brought by various governmental agencies of the State of New Jersey, including the NJDEP.



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As of December 31, 2012 and December 31, 2011, we maintained a litigation reserve relating to the remaining MTBE case in an amount which we believe was appropriate based on information then currently available. However, we are unable to estimate with certainty our liability for the case involving the State of New Jersey as there remains uncertainty as to the accuracy of the allegations in this case as they relate to us, our defenses to the claims, our rights to indemnification, and the aggregate possible amount of damages for which we may be held liable.

**Item 7A. Quantitative and Qualitative Disclosures about Market Risk**

Prior to April 2006, when we entered into a swap agreement with JPMorgan Chase, N.A. (the *Swap Agreement*), we had not used derivative financial or commodity instruments for trading, speculative or any other purpose, and had not entered into any instruments to hedge our exposure to interest rate risk. The Swap Agreement expired on June 30, 2011 and we currently do not intend to enter into another swap agreement. We do not have any foreign operations, and are therefore not exposed to foreign currency exchange rate.

Total floating interest rate borrowings outstanding as of December 31, 2012 under the prior credit agreement and the prior term loan agreement, which were terminated and repaid on February 25, 2013, were \$150.3 million and \$22.0 million, respectively, bearing interest at a weighted-average rate of 3.28% per annum. The weighted-average effective rate was based on (i) \$150.3 million of LIBOR rate borrowings outstanding under the prior credit agreement floating at market rates plus a margin of 3.00%, and (ii) \$22.0 million of LIBOR based borrowings outstanding under the prior term loan agreement floating at market rates (subject to a 30 day LIBOR floor of 0.40%) plus a margin of 3.10%.

We are exposed to interest rate risk, primarily as a result of our \$175.0 million senior secured revolving credit agreement (the *Credit Agreement*) entered into on February 25, 2013 with a group of commercial banks led by JPMorgan Chase Bank, N.A. (the *Bank Syndicate*), which is scheduled to mature in August 2015. The Credit Agreement allocates \$25.0 million of the total Bank Syndicate commitment to a term loan and \$150.0 million to a revolving credit facility. Subject to the terms of the Credit Agreement we have the option to increase by \$50.0 million the amount of the revolving credit facility to \$200.0 million. The Credit Agreement permits borrowings at an interest rate equal to the sum of a base rate plus a margin of 1.50% to 2.00% or a LIBOR rate plus a margin of 2.50% to 3.00% based on our leverage at the end of each quarterly reporting period. We use borrowings under the Credit Agreement to finance acquisitions and for general corporate purposes. Borrowings outstanding at floating interest rates under the Credit Agreement subsequent to the refinancing were approximately \$72.0 million.

We manage our exposure to interest rate risk by minimizing, to the extent feasible, our overall borrowing and monitoring available financing alternatives. Our interest rate risk as of December 31, 2012 remained the same as compared to December 31, 2011. We reduced our interest rate risk on February 25, 2013 by repaying floating interest rate debt with the proceeds of a \$100 million senior secured long-term loan agreement with the Prudential Insurance Company of America (the *Prudential Loan Agreement*), which matures in February 2021. The Prudential Loan Agreement bears interest at 6.00%. The Prudential Loan Agreement does not provide for scheduled reductions in the principal balance prior to its maturity. Our interest rate risk may materially change in the future if we seek other sources of debt or equity capital or refinance our outstanding debt.

Based on our average outstanding borrowings under the Credit Agreement projected at approximately \$72.0 million for 2013, an increase in market interest rates of 0.50% effective February 25, 2013 for 2013 would decrease our 2013 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 approximately \$72.0 million outstanding borrowings under the Credit Agreement is indicative of our future average floating interest rate borrowings for 2013 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 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 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.

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**Item 8. Financial Statements and Supplementary Data**

**GETTY REALTY CORP. INDEX TO FINANCIAL STATEMENTS AND  
SUPPLEMENTARY DATA**

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| <u>Consolidated Statements of Operations for the years ended December 31, 2012, 2011 and 2010</u>           | 44             |
| <u>Consolidated Statements of Comprehensive Income for the years ended December 31, 2012, 2011 and 2010</u> | 45             |
| <u>Consolidated Balance Sheets as of December 31, 2012 and 2011</u>   | 46             |
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**GETTY REALTY CORP. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**

(in thousands, except per share amounts)

|   | YEAR ENDED DECEMBER 31, |                  |                  |
|---|-------------------------|------------------|------------------|
|   | 2012                    | 2011             | 2010             |
| <b>Revenues:</b>                                    |                         |                  |                  |
| Revenues from rental properties                     | \$ 99,286               | \$ 100,263       | \$ 78,227        |
| Interest on notes and mortgages receivable          | 2,882                   | 2,658            | 133              |
| <b>Total revenues</b>                               | <b>102,168</b>          | <b>102,921</b>   | <b>78,360</b>    |
| <b>Operating expenses:</b>                          |                         |                  |                  |
| Rental property expenses                            | 30,232                  | 16,023           | 10,053           |
| Impairment charges                                  | 6,328                   | 15,904           |                  |
| Environmental expenses                              | 774                     | 5,597            | 5,371            |
| General and administrative expenses                 | 29,116                  | 22,065           | 8,178            |
| Allowance for deferred rent receivable              |                         | 19,288           |                  |
| Depreciation and amortization expense               | 12,541                  | 9,511            | 8,997            |
| <b>Total operating expenses</b>                     | <b>78,991</b>           | <b>88,388</b>    | <b>32,599</b>    |
| <b>Operating income</b>                             | <b>23,177</b>           | <b>14,533</b>    | <b>45,761</b>    |
| Other income, net                                   | 562                     | 16               | 156              |
| Interest expense                                    | (9,931)                 | (5,125)          | (5,050)          |
| <b>Earnings from continuing operations</b>          | <b>13,808</b>           | <b>9,424</b>     | <b>40,867</b>    |
| <b>Discontinued operations:</b>                     |                         |                  |                  |
| Earnings (loss) from operating activities           | (8,199)                 | 2,084            | 9,128            |
| Gains on dispositions of real estate                | 6,838                   | 948              | 1,705            |
| <b>Earnings (loss) from discontinued operations</b> | <b>(1,361)</b>          | <b>3,032</b>     | <b>10,833</b>    |
| <b>Net earnings</b>                                 | <b>\$ 12,447</b>        | <b>\$ 12,456</b> | <b>\$ 51,700</b> |
| <b>Basic and diluted earnings per common share:</b> |                         |                  |                  |
| Earnings from continuing operations                 | \$ .41                  | \$ .28           | \$ 1.46          |
| Earnings (loss) from discontinued operations        | \$ (.04)                | \$ .09           | \$ .39           |
| <b>Net earnings</b>                                 | <b>\$ .37</b>           | <b>\$ .37</b>    | <b>\$ 1.84</b>   |
| <b>Weighted average shares outstanding:</b>         |                         |                  |                  |
| Basic   | 33,395                  | 33,171           | 27,950           |
| Stock options                                       |                         | 1                | 3                |
| <b>Diluted</b>                                      | <b>33,395</b>           | <b>33,172</b>    | <b>27,953</b>    |

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

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**GETTY REALTY CORP. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

(in thousands)

|   | YEAR ENDED DECEMBER 31, |           |           |
|---|-------------------------|-----------|-----------|
|   | 2012                    | 2011      | 2010      |
| Net earnings                              | \$ 12,447               | \$ 12,456 | \$ 51,700 |
| Other comprehensive gain:                 |                         |           |           |
| Net unrealized gain on interest rate swap |                         | 1,153     | 1,840     |
| Comprehensive income                      | \$ 12,447               | \$ 13,609 | \$ 53,540 |

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

**Table of Contents****GETTY REALTY CORP. AND SUBSIDIARIES****CONSOLIDATED BALANCE SHEETS**

(in thousands, except share data)

|   | <b>DECEMBER 31,</b> |             |
|---|---------------------|-------------|
|   | <b>2012</b>         | <b>2011</b> |
| <b>ASSETS:</b>  |                     |             |
| Real Estate:  |                     |             |
| Land  | \$ 318,814          | \$ 345,473  |
| Buildings and improvements  | 208,325             | 270,381     |
|   | 527,139             | 615,854     |
| Less accumulated depreciation and amortization  | (106,931)           | (137,117)   |
| Real estate held for use, net   | 420,208             | 478,737     |
| Real estate held for sale, net  | 25,340              |             |
| Real estate, net  | 445,548             | 478,737     |
| Net investment in direct financing leases   | 91,904              | 92,632      |
| Deferred rent receivable (net of allowance of \$0 at December 31, 2012 and \$25,630 at December 31, 2011)   | 12,448              | 8,080       |
| Cash and cash equivalents   | 16,876              | 7,698       |
| Notes, mortgages and accounts receivable (net of allowance of \$25,371 at December 31, 2012 and \$9,480 at December 31, 2011)                     | 41,865              | 36,083      |
| Prepaid expenses and other assets   | 31,940              | 11,859      |
| Total assets  | \$ 640,581          | \$ 635,089  |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY:</b>  |                     |             |
| Borrowings under credit line  | \$ 150,290          | \$ 147,700  |
| Term loan   | 22,030              | 22,810      |
| Environmental remediation obligations   | 46,150              | 57,700      |
| Dividends payable   | 4,202               |             |
| Accounts payable and accrued liabilities  | 45,160              | 34,710      |
| Total liabilities   | 267,832             | 262,920     |
| Commitments and contingencies (notes 2, 3, 5 and 6)   |                     |             |
| Shareholders' equity:   |                     |             |
| Common stock, par value \$.01 per share; authorized 50,000,000 shares; issued 33,396,720 at December 31, 2012 and 33,394,395 at December 31, 2011 | 334                 | 334         |
| Paid-in capital   | 461,426             | 460,687     |
| Dividends paid in excess of earnings  | (89,011)            | (88,852)    |
| Total shareholders' equity  | 372,749             | 372,169     |
| Total liabilities and shareholders' equity  | \$ 640,581          | \$ 635,089  |

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





**Table of Contents****GETTY REALTY CORP. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF CASH FLOWS**

(in thousands)

|  | YEAR ENDED DECEMBER 31, |           |           |
|--|-------------------------|-----------|-----------|
|  | 2012                    | 2011      | 2010      |
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>   |                         |           |           |
| Net earnings   | \$ 12,447               | \$ 12,456 | \$ 51,700 |
| Adjustments to reconcile net earnings to net cash flow provided by operating activities: |                         |           |           |
| Depreciation and amortization expense  | 13,700                  | 10,336    | 9,738     |
| Impairment charges   | 13,942                  | 20,226    |           |
| Gains on dispositions of real estate   | (6,866)                 | (968)     | (1,705)   |
| Deferred rent receivable, net of allowance   | (4,368)                 | (453)     | 96        |
| Allowance for deferred rent and accounts receivable                                      | 15,903                  | 28,879    | 229       |
| Amortization of above-market and below-market leases                                     | (285)                   | (685)     | (1,260)   |
| Amortization of credit agreement origination costs                                       | 3,396                   | 207       | 304       |
| Accretion expense  | 3,174                   | 899       | 775       |
| Stock-based employee compensation expense  | 757                     | 643       | 480       |
| Changes in assets and liabilities:   |                         |           |           |
| Accounts receivable, net   | (15,848)                | (14,890)  | (189)     |
| Prepaid expenses and other assets  | (8,004)                 | 151       | (379)     |
| Environmental remediation obligations  | (9,009)                 | (1,981)   | (2,512)   |
| Accounts payable and accrued liabilities   | (3,054)                 | 5,935     | (213)     |
| Net cash flow provided by operating activities   | 15,885                  | 60,755    | 57,064    |
| <b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>   |                         |           |           |
| Property acquisitions and capital expenditures   | (4,148)                 | (167,495) | (4,725)   |
| Proceeds from dispositions of real estate  | 9,855                   | 2,317     | 2,858     |
| (Increase) decrease in cash held for property acquisitions                               | (1,615)                 | (750)     | 2,665     |
| Amortization of (accretion in) investment in direct financing leases                     | 728                     | 505       | (323)     |
| Issuance of notes, mortgages and other receivables                                       | (2,972)                 | (30,400)  |           |
| Collection of notes and mortgages receivable   | 1,703                   | 2,679     | 158       |
| Net cash flow provided by (used in) investing activities                                 | 3,551                   | (193,144) | 633       |
| <b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>   |                         |           |           |
| Borrowings under credit agreement  | 4,000                   | 247,253   | 163,500   |
| Repayments under credit agreement  | (1,410)                 | (140,853) | (273,400) |
| Repayments under term loan agreement   | (780)                   | (780)     | (780)     |
| Payments of capital lease obligations  | (152)                   | (59)      |           |
| Payments of cash dividends   | (8,404)                 | (63,436)  | (52,332)  |
| Payments of loan origination costs   | (4,144)                 | (175)     |           |
| Cash paid in settlement of restricted stock units  | (18)                    |           |           |
| Security deposits received   | 650                     | 29        | 182       |
| Net proceeds from issuance of common stock   |                         | 91,986    | 108,205   |
| Net cash flow provided by (used in) financing activities                                 | (10,258)                | 133,965   | (54,625)  |
| Net increase in cash and cash equivalents  | 9,178                   | 1,576     | 3,072     |
| Cash and cash equivalents at beginning of year   | 7,698                   | 6,122     | 3,050     |

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|  |           |          |          |
|--|-----------|----------|----------|
| Cash and cash equivalents at end of year | \$ 16,876 | \$ 7,698 | \$ 6,122 |
|--|-----------|----------|----------|

Supplemental disclosures of cash flow information

*Cash paid (refunded) during the period for:*

|                                       |          |          |          |
|---------------------------------------|----------|----------|----------|
| Interest paid                         | \$ 6,293 | \$ 5,523 | \$ 4,863 |
| Income taxes, net                     | 810      | 267      | 365      |
| Environmental remediation obligations | 4,889    | 3,598    | 4,667    |

*Non-cash transactions*

|  |       |       |  |
|--|-------|-------|--|
| Issuance of mortgages related to property dispositions | 4,568 | 1,068 |  |
|--|-------|-------|--|

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

**Table of Contents****GETTY REALTY CORP. AND SUBSIDIARIES****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Basis of Presentation:** The consolidated financial statements include the accounts of Getty Realty Corp. and its wholly-owned subsidiaries. We are a real estate investment trust ( REIT ) specializing in the ownership, leasing and financing of retail motor fuel and convenience store properties and petroleum distribution terminals. The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ( GAAP ). We manage and evaluate our operations as a single segment. All significant intercompany accounts and transactions have been eliminated.

**Use of Estimates, Judgments and Assumptions:** The 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 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, receivables, deferred rent receivable, net investment in direct financing leases, environmental remediation costs, real estate, depreciation and amortization, impairment of long-lived assets, litigation, environmental remediation obligations, accrued liabilities, income taxes and the allocation of the purchase price of properties acquired to the assets acquired and liabilities assumed.

**Subsequent events:** We evaluated subsequent events and transactions for potential recognition or disclosure in our consolidated financial statements.

**Fair Value Hierarchy:** The preparation of 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 financial statements and revenues and expenses during the period reported using a hierarchy ( 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. We have a receivable that is measured at fair value on a recurring basis using Level 3-inputs of \$2,972,000 as of December 31, 2012. Due to the subjectivity inherent in the internal valuation techniques used in estimating fair value, the amount ultimately received from this receivable may vary significantly from our estimate. We have certain real estate assets that are measured at fair value on a non-recurring basis using Level 3-inputs as of December 31, 2012 and December 31, 2011 of \$4,967,000 and \$19,214,000, 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.

The following summarizes as of December 31, 2012 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    |
|-----------------------|----------|---------|----------|----------|
| <b>Assets:</b>        |          |         |          |          |
| Receivable            | \$       | \$      | \$ 2,972 | \$ 2,972 |
| Mutual funds          | \$ 3,013 | \$      | \$       | \$ 3,013 |
| <b>Liabilities:</b>   |          |         |          |          |
| Deferred Compensation | \$ 3,013 | \$      | \$       | \$ 3,013 |

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The following summarizes as of December 31, 2011 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    |
|-----------------------|----------|---------|---------|----------|
| <b>Assets:</b>        |          |         |         |          |
| Mutual funds          | \$ 2,744 | \$      | \$      | \$ 2,744 |
| <b>Liabilities:</b>   |          |         |         |          |
| Deferred Compensation | \$ 2,744 | \$      | \$      | \$ 2,744 |

Discontinued Operations: We report as discontinued operations approximately 111 properties which meet the criteria to be classified as held for sale in accordance with GAAP as of the end of the current period and certain properties disposed of during the periods presented. Discontinued operations, including gains and losses, impairment charges and the operating results for properties disposed of in 2012, 2011 and 2010 and impairment charges and operating results of properties classified as held for sale, are included in a separate component of income on the consolidated statement of operations. The operating results and impairment charges of such properties for the years ended 2011 and 2010 have also been reclassified to discontinued operations to conform to the 2012 presentation. The properties currently being marketed for sale have a net carrying value aggregating \$25,340,000 and are included in real estate held for sale, net in our consolidated balance sheets. The revenue from rental properties, impairment charges, other operating expenses and gains from dispositions of real estate related to these properties are as follows:

| (in thousands)                               | Year ended December 31, |           |           |
|--|-------------------------|-----------|-----------|
|  | 2012                    | 2011      | 2010      |
| Revenues from rental properties              | \$ 5,485                | \$ 10,178 | \$ 10,172 |
| Impairment charges                           | (7,614)                 | (4,322)   |           |
| Other operating expenses                     | (6,070)                 | (3,772)   | (1,044)   |
| Earnings (loss) from operating activities    | (8,199)                 | 2,084     | 9,128     |
| Gains from dispositions of real estate       | 6,838                   | 948       | 1,705     |
| Earnings (loss) from discontinued operations | \$ (1,361)              | \$ 3,032  | \$ 10,833 |

Real Estate: Real estate assets are stated at cost less accumulated depreciation and amortization. Upon acquisition of real estate and leasehold interests, 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 record the applicable assets and liabilities at their fair value. 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. When accounting for business combinations, the amounts recorded for the fair value of assets acquired and liabilities assumed for above-market and below-market leases, leasehold interests as lessee and capital lease obligations are non-cash transactions which do not appear on the face of the consolidated statements of cash flows. (See note 11 for additional information regarding property acquisitions.)

Depreciation and Amortization: Depreciation of real estate is computed on the straight-line method based upon the estimated useful lives of the assets, which generally range from 16 to 25 years for buildings and improvements, or the term of the lease if shorter. Asset retirement costs are depreciated over the remaining useful lives of underground storage tanks ( USTs or UST ) or 10 years for asset retirement costs related to environmental remediation obligations, which costs are attributable to the group of assets identified at a property. Leasehold interests, in-place leases and tenant relationships are amortized over the remaining term of the underlying lease.

Impairment of Long-Lived Assets and Long-Lived Assets to Be Disposed Of: 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. We review and adjust as necessary our depreciation estimates and method when long-lived assets are tested for recoverability. Assets held for disposal are written down to fair value less estimated disposition costs.

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We recorded non-cash impairment charges aggregating \$13,942,000 and \$20,226,000 for the years ended December 31, 2012 and 2011, respectively, in continuing operations and in discontinued operations. We record non-cash impairment charges and reduce the

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carrying amount of properties held for use to fair value where the carrying amount of the property exceeded the projected undiscounted cash flows expected to be received during the assumed holding period which includes the estimated sales value expected to be received at disposition. We record non-cash impairment charges and reduce the carrying amount of properties held for sale to fair value less disposal costs. The non-cash impairment charges recorded during the year ended December 31, 2012 were attributable to reductions in our estimates of value for properties held for sale and the accumulation of asset retirement costs as a result of an increase in estimated environmental liabilities which increased the carrying value of certain properties in excess of their fair value. Impairment charges recorded during the year ended December 31, 2011 were attributable to reductions in our estimates of value for properties marketed for sale, reductions in the assumed holding period used to test for impairment and the accumulation of asset retirement costs as a result of an increase in estimated environmental liabilities which increased the carrying value of certain properties in excess of their fair value. The estimated fair value of real estate is based on the price that would be received to sell the property in an orderly transaction between market participants at the measurement date. The internal valuation techniques that we used included discounted cash flow analysis, an income capitalization approach on prevailing or earnings multiples applied to earnings from the property, analysis of recent comparable lease and sales transactions, actual leasing or sale negotiations, bona fide purchase offers received from third parties and/or consideration of the amount that currently would be required to replace the asset, as adjusted for obsolescence. 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 ranging up to 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.

**Cash and Cash Equivalents:** We consider highly liquid investments purchased with an original maturity of 3 (three) months or less to be cash equivalents.

**Notes and Mortgages Receivable:** Notes and mortgages receivables consist of loans originated by us related to seller financing and funding provided to two tenants in conjunction with properties acquired in 2011. 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 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 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.

**Deferred Rent Receivable and Revenue Recognition:** We earn rental income under operating and direct financing leases with tenants. 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 the consolidated balance sheet. We provide reserves for a portion of the recorded deferred rent receivable if circumstances indicate that it is not reasonable to assume that the tenant will make all of its contractual lease payments when due during the current term of the lease. The straight-line method requires that rental income related to those properties for which a reserve was provided is effectively recognized in subsequent periods when payment is due under the contractual payment terms. Lease termination fees are recognized as rental 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 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 revenue from rental properties over the remaining lives of the in-place leases.

**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. Net investment in direct financing leases represents the investments in leased assets accounted for as direct financing leases. 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.

**Environmental Remediation Obligations:** The estimated future costs for known environmental remediation requirements are accrued when it is probable that a liability has been incurred, including legal obligations associated with the retirement of tangible long-lived assets if the asset

retirement obligation results from the normal operation of those assets and a reasonable estimate of fair

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value can be made. Environmental remediation obligations are estimated based on the level and impact of contamination at each property. The accrued liability is the aggregate of the best estimate of the fair value of cost for each component of the liability. The accrued liability is net of recoveries of environmental costs from state underground storage tank ( UST or USTs ) remediation funds, with respect to both past and future environmental spending based on 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.

**Litigation:** Legal fees related to litigation are expensed as legal services are performed. We provide for litigation reserves, including certain litigation related to environmental matters, when it is probable that a liability has been incurred and a reasonable estimate of the liability can be made. If the estimate of the liability can only be identified as a range, and no amount within the range is a better estimate than any other amount, the minimum of the range is accrued for the liability. We accrue our share of environmental liabilities based on our assumptions of the ultimate allocation method and share that will be used when determining our share of responsibility.

**Income Taxes:** We and our subsidiaries file a consolidated federal income tax return. Effective January 1, 2001, we elected to qualify, and believe 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 shareholders 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. Although tax returns for the years 2009, 2010 and 2011, and tax returns which will be filed for the year ended 2012 remain open to examination by federal and state tax jurisdictions under the respective statute of limitations, we have not currently identified any uncertain tax positions related to those years and, accordingly, have not accrued for uncertain tax positions as of December 31, 2012 or 2011.

**Interest Expense and Interest Rate Swap Agreement:** In April 2006 we entered into an interest rate swap agreement with JPMorgan Chase Bank, N.A. as the counterparty, designated and qualifying as a cash flow hedge, to reduce our variable interest rate risk by effectively fixing a portion of the interest rate for existing debt and anticipated refinancing transactions. We have not entered into financial instruments for trading or speculative purposes. The fair value of the interest rate swap obligation was based upon the estimated amounts we would receive or pay to terminate the contract and was determined using an interest rate market pricing model. Changes in the fair value of the agreement were included in the consolidated statements of comprehensive income and would have been recorded in the consolidated statements of operations if the agreement was not an effective cash flow hedge for accounting purposes.

**Earnings per Common Share:** Basic earnings per common share gives effect, utilizing the two-class method, to the potential dilution from the issuance of common shares in settlement of restricted stock units ( RSUs or RSU ) which provide for non-forfeitable dividend equivalents equal to the dividends declared per common share. Basic 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 year. Diluted earnings per common share, also gives effect to the potential dilution from the exercise of stock options utilizing the treasury stock method.

| (in thousands):   | <b>Year ended December 31,</b> |             |             |
|---|--------------------------------|-------------|-------------|
|   | <b>2012</b>                    | <b>2011</b> | <b>2010</b> |
| Earnings from continuing operations   | \$ 13,808                      | \$ 9,424    | \$ 40,867   |
| Less dividend equivalents attributable to restricted stock units outstanding  | (82)                           | (249)       | (228)       |
| Earnings from continuing operations attributable to common shareholders used for basic earnings per share calculation | 13,726                         | 9,175       | 40,639      |
| Earnings (loss) from discontinued operations  | (1,361)                        | 3,032       | 10,833      |
| Net earnings attributable to common shareholders used for basic earnings per share calculation                        | \$ 12,365                      | \$ 12,207   | \$ 51,472   |
| Weighted-average number of common shares outstanding:   |                                |             |             |
| Basic   | 33,395                         | 33,171      | 27,950      |
| Stock options   |                                | 1           | 3           |
| Diluted   | 33,395                         | 33,172      | 27,953      |



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|   |     |     |     |
|---|-----|-----|-----|
| Restricted stock units outstanding at the end of the period | 216 | 171 | 123 |
|---|-----|-----|-----|

Stock-Based Compensation: Compensation cost for our stock-based compensation plans using the fair value method was \$757,000, \$643,000 and \$480,000 for the years ended December 31, 2012, 2011 and 2010, respectively, and is included in general and administrative expense. The impact of the accounting for stock-based compensation is, and is expected to be, immaterial to our financial position and results of operations.

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Reclassifications: Certain amounts related to discontinued operations for 2011 and 2010 have been reclassified to conform to the 2012 presentation.

New Accounting Pronouncement: In May 2011, the FASB issued Accounting Standards Update No. 2011-04, Fair Value Measurements and Disclosures (Topic 820) Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRS (ASU 2011-04). ASU 2011-04 clarifies the application of existing fair value measurement requirements, changes certain principles related to measuring fair value and requires additional disclosures about fair value measurements. Required disclosures are expanded under the new guidance, especially for fair value measurements that are categorized within Level 3 of the fair value hierarchy, for which quantitative information about the unobservable inputs used, and a narrative description of the valuation processes in place and sensitivity of recurring Level 3 measurements to changes in unobservable inputs is required. Entities will also be required to disclose the categorization by level of the fair value hierarchy for items that are not measured at fair value in the balance sheet but for which the fair value is required to be disclosed. ASU 2011-04 is effective for interim and annual periods beginning after December 15, 2011, and is applied prospectively. The adoption of this guidance in 2012 resulted in expanded disclosures on fair value measurements but did not have an impact to our measurements of fair value.

**2. LEASES**

Our business model is to lease our properties on a triple-net basis primarily to petroleum distributors and to a lesser extent to individual operators. Our tenants operate our properties directly or sublet our properties to operators who operate their gas stations, convenience stores, automotive repair service facilities or other businesses at our properties. These tenants are responsible for the operations conducted at these 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. Substantially all of our tenants' financial results depend on the sale of refined petroleum products and 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. In those instances where we determine that the best use for a property is no longer as a gas station, we will seek an alternative tenant or buyer for the property. As of December 31, 2012, approximately 20 of our properties are leased for uses such as quick serve restaurants, automobile sales and other retail purposes, excluding approximately 40 properties previously subject to the Master Lease with Marketing which are currently held for sale and which have temporary occupancies. Our 1,081 properties are located in 21 states across the United States with concentrations in the Northeast and Mid-Atlantic regions.

More than 700 of the properties we own or lease as of December 31, 2012 were previously leased to Getty Petroleum Marketing Inc. (Marketing) comprising a unitary premises pursuant to a master lease (the Master Lease) and we derived a majority of our revenues from the leasing of these properties under the Master Lease. On December 5, 2011, Marketing filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the Southern District of New York (the Bankruptcy Court). Marketing rejected the Master Lease pursuant to an Order issued by the Bankruptcy Court effective April 30, 2012. In accordance with GAAP, we recognize in revenue from rental properties in our consolidated statement of operations the full contractual rent and real estate obligations due to us by Marketing during the term of the Master Lease and provide bad debt reserves included in general and administrative expenses and in earnings (loss) from discontinued operations in our consolidated statement of operations for our estimate of uncollectible amounts due from Marketing. As a result, we provided net bad debt reserves related to uncollected rent and real estate taxes due from Marketing of \$8,802,000 in the fourth quarter of 2011 and \$13,980,000 for the year ended December 31, 2012. The reserve provided in the year ended December 31, 2012 is net of a reduction of \$1,348,000 as a result of receiving cash from a partial liquidation of the Marketing bankruptcy estate. We have provided bad debt reserves aggregating \$22,782,000 for all outstanding rent and real estate tax obligations due from Marketing as of December 31, 2012 substantially all of which remain unpaid as of the filing of this Annual Report on Form 10-K. (See note 3 for additional information regarding Marketing and the Master Lease.)

As a result of Marketing's bankruptcy filing and Marketing's rejection of the Master Lease, we commenced a process to reposition the portfolio of properties that were subject to the Master Lease after the properties became available to us free of Marketing's tenancy. As a result of that process, as of December 31, 2012, we have entered into long-term triple-net leases with petroleum distributors for ten separate property portfolios comprising 443 properties in the aggregate and month-to-month license agreements with occupants of approximately 155 properties (substantially all of whom were Marketing's former sub-tenants) allowing such occupants to continue to occupy and use these properties as gas stations, convenience stores, automotive repair service facilities or other businesses. The month-to-month license agreements require the operators to sell fuel provided exclusively by petroleum distributors with whom we have contracted for interim fuel supply and from whom we receive a fee based on gallons sold. We have also entered into additional month-to-month license agreements at approximately 40 properties which have had their underground storage tanks removed and are being used for various retail uses other than as a gas station. These properties are currently marketed for sale. Our month-to-month license agreements differ from our typical triple-net lease agreements in that we are responsible for the payment of certain environmental costs and property operating expenses including real estate taxes. Approximately 60 properties previously subject to the Master Lease are currently vacant, the majority of which have had their underground storage tanks removed and are being marketed for sale.



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The long-term triple-net leases with petroleum distributors for ten separate property portfolios comprising 443 properties in the aggregate 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 of up to three years on the anniversary of the commencement date of the leases. The majority of the leases provide for additional rent based on the volume of petroleum products sold. As triple-net lessees, the tenants are required to pay all amounts pertaining to the properties subject to the leases, including taxes, assessments, licenses and permit fees, charges for public utilities and all other governmental charges. In addition, the majority of the leases require the tenants to make capital expenditures at our properties substantially all of which is related to the replacement of underground storage tanks that are the property of our tenants. In certain of our new leases, we have committed to co-invest up to \$14,080,000 with our tenants for a portion of such capital expenditures, which deferred expense is recognized on a straight-line basis as a reduction of revenues from rental properties over the terms of the various leases. As part of certain of the triple-net leases we have entered into through December 31, 2012, 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 life or earlier if circumstances warranted at the 443 sites 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, during the year ended December 31, 2012, we removed \$11,153,000 of asset retirement obligations and \$9,795,000 of net asset retirement costs related to USTs from our balance sheet. The net amount of \$1,358,000 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. We incurred \$3,146,000 of lease origination costs in 2012, which deferred expense is recognized on a straight-line basis as a reduction of revenues from rental properties over the terms of the various leases.

Revenues from rental properties included in continuing operations for the years ended December 31, 2012, 2011 and 2010 were \$99,286,000, \$100,263,000 and \$78,227,000, respectively, of which \$20,136,000, \$52,646,000 and \$50,135,000, respectively, was contractually due or received from Marketing under the Master Lease through its rejection on April 30, 2012 and \$72,954,000, \$45,515,000 and \$26,426,000, respectively, was contractually due or received from other tenants including rent for May 2012 through December 2012 related to properties repositioned from the Master Lease. Revenues from rental properties and rental property expenses included in continuing operations included \$11,263,000 for the year ended December 31, 2012, \$6,639,000 for the year ended December 31, 2011 and \$1,849,000, for the year ended December 31, 2010 for real estate taxes paid by us which were reimbursable by tenants (which includes amounts related to properties previously subject to the Master Lease discussed in the following paragraph). Revenues from rental properties included in continuing operations for the year ended December 31, 2012 also include \$1,763,000 for amounts realized under interim fuel supply agreements.

As a result of Marketing's bankruptcy filing, beginning in the first quarter of 2012, we began paying past due real estate taxes for 2011 and 2012, which taxes Marketing historically paid directly. Real estate taxes that we pay and were due from Marketing through April 30, 2012, the date the Master Lease was rejected, and from certain other tenants who are contractually obligated to reimburse us for the payment of real estate taxes pursuant to the terms of triple-net lease agreements are included in revenues from rental properties and in rental property expense in our consolidated statement of operations. Revenues from rental properties and rental property expense included in continuing operations included \$11,263,000, \$6,639,000 and \$1,849,000 for the year ended December 31, 2012, 2011 and 2010, respectively, for real estate taxes paid by us which were due from Marketing and other tenants. Marketing also made additional direct payments for other operating expenses related to these properties, including environmental remediation obligations other than those liabilities that were retained by us. Costs paid directly by Marketing under the terms of the Master Lease are not reflected in revenues from rental properties or rental property expense in our consolidated financial statements. We continue to incur costs associated with the Marketing bankruptcy and we anticipate paying directly other Property Expenditures (as defined below) historically paid by Marketing under the terms of the Master Lease for the foreseeable future.

In accordance with GAAP, we recognize rental revenue in amounts which vary from the amount of rent contractually due or received 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 (or average) basis over the current lease term, net amortization of above-market and below-market leases and recognition of 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 (the Revenue Recognition Adjustments). Revenue Recognition Adjustments included in continuing operations increased rental revenue by \$4,433,000, \$2,102,000 and \$1,666,000 for the years ended December 31, 2012, 2011 and 2010, respectively.

We provide reserves 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. As of December 31, 2011, the gross deferred rent receivable attributable to the Master Lease of \$25,630,000 was fully reserved. As a result of the developments described above, we previously concluded that it was probable that we would not receive from Marketing the entire amount of the contractual lease payments owed to us under the Master Lease. Accordingly, during the third and fourth quarters of 2011, we recorded non-cash allowances for deferred rental revenue in continuing and discontinued operations aggregating \$11,043,000 and \$8,715,000, respectively, fully reserving in the fourth quarter of 2011 for the deferred rent receivable relating to the Master Lease. These non-cash



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allowances reduced our net earnings for the applicable periods in 2011, but did not impact our cash flow from operating activities. The gross deferred rent receivable and the reserve relating to the Master Lease were derecognized in the second quarter of 2012 upon termination of the Master Lease.

The components of the \$91,904,000 net investment in direct financing leases as of December 31, 2012, are minimum lease payments receivable of \$203,869,000 plus unguaranteed estimated residual value of \$11,991,000 less unearned income of \$123,956,000.

Future contractual minimum annual rentals receivable from our tenants, which have terms in excess of one year as of December 31, 2012, are as follows (in thousands):

| YEAR ENDING DECEMBER 31, | OPERATING<br>LEASES | DIRECT<br>FINANCING<br>LEASES | TOTAL(a)  |
|--------------------------|---------------------|-------------------------------|-----------|
| 2013                     | \$ 67,940           | \$ 11,035                     | \$ 78,975 |
| 2014                     | 61,160              | 11,286                        | 72,446    |
| 2015                     | 60,572              | 11,462                        | 72,034    |
| 2016                     | 60,624              | 11,640                        | 72,264    |
| 2017                     | 59,993              | 11,942                        | 71,935    |
| Thereafter               | 495,195             | 146,506                       | 641,701   |

(a) Includes \$89,392,000 of future minimum annual rentals receivable under subleases.

Rent expense, substantially all of which consists of minimum rentals on non-cancelable operating leases, amounted to \$7,903,000, \$8,009,000 and \$7,007,000 for the years ended December 31, 2012, 2011 and 2010, respectively, and is included in rental property expenses using the straight-line method. Rent contractually due under subleases for the years ended December 31, 2012, 2011 and 2010 was \$11,809,000, \$13,325,000 and \$11,868,000, respectively.

We have obligations to lessors under non-cancelable operating leases which have terms in excess of one year, principally for gasoline stations and convenience stores. The leased properties have a remaining lease term averaging over 10 years, including renewal options. Future minimum annual rentals payable under such leases, excluding renewal options, are as follows: 2013 \$7,826,000, 2014 \$6,830,000, 2015 \$5,631,000, 2016 \$4,474,000, 2017 \$2,771,000 and \$5,866,000 thereafter.

**3. 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.

**MARKETING AND THE MASTER LEASE**

On December 5, 2011, Marketing filed for Chapter 11 bankruptcy protection in the Bankruptcy Court. On March 7, 2012, we entered into a stipulation with Marketing and with the Official Committee of Unsecured Creditors in the Bankruptcy proceedings (the Creditors Committee), which was approved and made an Order by the Bankruptcy Court on April 2, 2012 (the Stipulation). Pursuant to the terms of the Stipulation, in addition to our other pre-petition and post-petition claims, we are entitled to recover an administrative claim capped at \$10,500,000 for the partial payment of fixed rent and performance of other obligations due from Marketing under the Master Lease from December 5, 2011 until possession of the properties subject to the Master Lease was returned to us effective April 30, 2012 (the Administrative Claim). Our Administrative Claim has priority over the claims of other creditors and certain of our other claims. As of the date of this filing on Form 10-K, the outstanding unpaid principal amount of our Administrative Claim is \$7,443,000.

The Bankruptcy Court has appointed a liquidating trustee (the Liquidating Trustee) to oversee the liquidation of the Marketing estate (the Marketing Estate). The Liquidating Trustee continues to oversee the Marketing Estate and pursue claims for the benefit of its creditors, including those related to the recovery of various deposits, including surety bonds, insurance policy claims and claims made to state funded tank

reimbursement programs. We received distributions reducing our Administrative Claim of \$1,348,000 in the third and fourth quarters of 2012 and \$1,709,000 in the first quarter of 2013, from the Marketing Estate. As a result, in 2012, we reversed portions of our bad debt reserve for uncollectible amounts due from Marketing and reduced bad debt expense included in general and administrative expenses on our consolidated statement of income. We cannot provide any assurance that we will ultimately collect any additional claims against or unpaid amounts due from the Marketing Estate pursuant to the Plan of Liquidation, or otherwise.

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In December 2011, the Marketing Estate filed a lawsuit against Marketing's former parent, Lukoil Americas Corporation, and certain of its affiliates (collectively, Lukoil), as well as the former directors and officers of Marketing (the Lukoil Complaint). The Lukoil Complaint asserts, among other claims, that Marketing's sale of assets to Lukoil in November 2009 constituted a fraudulent conveyance, and that the assets or their value can be recovered from Lukoil. In addition, the Lukoil Complaint asserts that the former directors and officers violated their fiduciary duties to Marketing in approving and effectuating the challenged sale, and are liable for money damages. The Liquidating Trustee is pursuing these claims for the benefit of the Marketing Estate. It is possible that the Liquidating Trustee will obtain a favorable judgment or will settle with the defendants, and therefore it is possible that we may ultimately recover a portion of our claims against Marketing, including our Administrative Claim, which has priority over most other creditors' claims, and our additional pre-petition and post-petition claims.

In October 2012, we entered into an agreement with the Marketing Estate to make loans and otherwise fund up to an aggregate amount of \$6,425,000 to fund the prosecution of the Lukoil Complaint and certain Liquidating Trustee expenses incurred in connection with the wind-down of the Marketing Estate (the Litigation Funding Agreement). This agreement provides that we are entitled to receive proceeds, if any, from the successful prosecution of the Lukoil Complaint in an amount equal to the sum of (i) all funds advanced for wind-down costs and expert witness and consultant fees plus interest accruing at 15% per annum on such advances made by us; plus (ii) the greater of all funds advanced for legal fees and expenses relating to the prosecution of the Lukoil Complaint plus interest accruing at 15% per annum on such advances made by us, or 24% of the gross proceeds from any settlement or favorable judgment obtained by the Liquidating Trustee due to the Lukoil Complaint. We advanced \$1,672,000 in the fourth quarter of 2012 and \$143,000 in the first quarter of 2013 to the Marketing Estate pursuant to the Litigation Funding Agreement. It is possible that we may agree to advance amounts in excess of \$6,425,000. The Litigation Funding Agreement also provides that we are entitled to be reimbursed for up to \$1,300,000 of our legal fees incurred in connection with the Litigation Funding Agreement. Based on the terms of the Litigation Funding Agreement, we have recorded a receivable of \$2,972,000 as of December 31, 2012, which includes amounts advanced and amounts due us for reimbursable legal fees we incurred in connection with the Litigation Funding Agreement. Payments that we receive pursuant to the Litigation Funding Agreement will not reduce our Administrative Claim or our other pre-petition and post-petition claims against Marketing. A portion of the payments we receive pursuant to the Litigation Funding Agreement may be subject to federal income taxes. We cannot provide any assurance that we will be repaid any amounts we advance pursuant to the Litigation Funding Agreement or the reimbursable legal fees we have incurred.

We have elected to account for the advances, accrued interest and litigation reimbursements due us pursuant to the Litigation Funding Agreement on a fair value basis. We used unobservable inputs based on comparable transactions when determining the fair value of Litigation Funding Agreement. We concluded that the terms of the Litigation Funding Agreement are within a range of terms representing the market for such arrangements when considering the unique circumstances particular to the counterparties to such funding agreements. These inputs include the potential outcome of the litigation related to the Lukoil Complaint including the probability of the Marketing Estate prevailing in its lawsuit and the potential amount that may be recovered by the Marketing Estate from Lukoil Americas. We also applied a discount factor commensurate with the risk that the Marketing Estate may not prevail in its lawsuit. We considered that fair value is defined as an amount of consideration that would be exchanged between a willing buyer and seller. Accordingly, we believe that a market participant would likely purchase our rights from us for approximately the amounts currently due us under the terms of the Litigation Funding Agreement.

Under the Master Lease, Marketing was responsible to pay for certain environmental related liabilities and expenses. As a result of Marketing's bankruptcy filing, we have accrued for certain environmental liabilities (the Marketing Environmental Liabilities) and commenced funding remediation activities during the second quarter of 2012 related to such accruals. We do not expect to be reimbursed by Marketing for any such remediation activities except as a result of realizing a claim deriving from the Lukoil Complaint. We expect to continue to incur and fund costs associated with the Marketing bankruptcy proceedings and associated eviction proceedings as well as costs associated with repositioning properties previously leased to Marketing. We expect to continue to incur operating expenses such as maintenance, repairs, real estate taxes, insurance and general upkeep related to these properties (Property Expenditures) for vacant properties and properties subject to our month-to-month license agreements. In certain of our new leases, we have also agreed to co-invest with our tenants to fund capital improvements including replacing underground storage tanks and related equipment or renovating some of the properties previously leased to Marketing (Capital Improvements).

It is possible that our estimates for the Marketing Environmental Liabilities relating to the properties previously leased to Marketing will be higher than the amounts we have accrued and that issues involved in re-letting or repositioning these properties may require significant management attention that would otherwise be devoted to our ongoing business. In addition, we increased our number of tenants significantly and are performing property related functions previously performed by Marketing, both of which have resulted in permanent increases in our annual operating expenses. The incurrence of these various expenses may materially negatively impact our cash flow and ability to pay dividends.



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Our estimates, judgments, assumptions and beliefs regarding Marketing and the Master Lease affect the amounts reported in our financial statements and are subject to change. Actual results could differ from these estimates, judgments and assumptions and such differences could be material. If our actual expenditures for the Marketing Environmental Liabilities are greater than the amounts accrued, if we incur significant costs and operating expenses relating to the properties comprising the Master Lease portfolio; if the repositioning of the properties comprising the Master Lease portfolio leads to a protracted and expensive process for taking control and or re-letting our properties; if re-letting the properties comprising the Master Lease portfolio requires significant management attention that would otherwise be devoted to our ongoing business; if the Bankruptcy Court takes actions that are detrimental to our interests; if we are unable to re-let or sell the properties comprising the Master Lease portfolio at all or upon terms that are favorable to us; or if we change our estimates, judgments, assumptions and beliefs; our business, financial condition, revenues, operating expenses, results of operations, liquidity, ability to pay dividends and stock price may continue to be materially adversely affected or adversely affected to a greater extent than we have experienced. (For information regarding factors that could adversely affect us relating to our lessees, including Marketing, see Part II, Item 1A. Risk Factors. )

### LEGAL PROCEEDINGS

We are subject to various legal proceedings and claims which arise in the ordinary course of our business. As of December 31, 2012 and December 31, 2011, we had accrued \$3,615,000 and \$4,242,000, respectively, for certain of these matters which we believe were appropriate based on information then currently available. We are unable to estimate ranges in excess of the amounts accrued with any certainty relating to 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 Newark, New Jersey Terminal and the Lower Passaic River and the MTBE multi-district litigation case, in particular, could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

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

In September 2003, we received a directive (the Directive ) from the State of New Jersey Department of Environmental Protection (the NJDEP ) notifying us that we are one of approximately 66 potentially responsible parties for natural resource damages resulting from discharges of hazardous substances into the Lower Passaic River. The Directive calls for an assessment of the natural resources that have been injured by the discharges into the Lower Passaic River and interim compensatory restoration for the injured natural resources. There has been no material activity with respect to the NJDEP Directive since early after its issuance. The responsibility for the alleged damages, the aggregate cost to remediate the Lower Passaic River, the amount of natural resource damages and the method of allocating such amounts among the potentially responsible parties have not been determined. Effective May 2007, the United States Environmental Protection Agency ( EPA ) entered into an Administrative Settlement Agreement and Order on Consent ( AOC ) with over 70 parties comprising a Cooperating Parties Group ( CPG ) (many of whom are also named in the Directive) who have collectively agreed to perform a Remedial Investigation and Feasibility Study ( RI/FS ) for the Lower Passaic River. We are a party to the AOC and are a member of the CPG. 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, and is scheduled to be completed in or about 2015. On June 18, 2012, all members of the CPG except Occidental Chemical Corporation ( Occidental ) entered into an Administrative Settlement Agreement and Order on Consent ( 10.9 AOC ) to perform certain remediation activities, including removal and capping of sediments at the river mile 10.9 area and certain testing. Similar to the RI/FS work, the CPG entered into an interim allocation for the costs of the river mile 10.9 work. The EPA issued a Unilateral Order to Occidental directing Occidental to participate and contribute to the cost of the river mile 10.9 work and discussions regarding Occidental s participation in the river mile 10.9 work are ongoing. Concurrently, the EPA is preparing a proposed Focused Feasibility Study ( FFS ) that the EPA claims will address sediment issues in the lower eight miles of the Lower Passaic River. The RI/FS and 10.9 AOC do not resolve liability issues for remedial work or restoration of, or compensation for, natural resource damages to the Lower Passaic River, which are not known at this time.

In a related action, in December 2005, the State of New Jersey through various state agencies brought suit against certain companies which the State alleges are responsible for various categories of past and future damages resulting from discharges of hazardous substances to the Passaic River. In February 2009, certain of these defendants filed third-party complaints against approximately 300 additional parties, including us, seeking contribution for such parties proportionate share of response costs, cleanup and other damages, based on their relative contribution to pollution of the Passaic River and adjacent bodies of water. We believe that ChevronTexaco is contractually obligated to indemnify us, pursuant to an indemnification agreement, for most if not all of the conditions at the property identified by the NJDEP and the EPA. Accordingly, our potential range of loss including our ultimate legal and financial liability, if any, cannot be made with any certainty at this time

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We are defending against one remaining lawsuit of many brought by or on behalf of private and public water providers and governmental agencies. These cases alleged (and, as described below with respect to one remaining case, continue to allege) various theories of liability due to contamination of groundwater with methyl tertiary butyl ether (a fuel derived from methanol, commonly referred to as MTBE) as the basis for claims seeking compensatory and punitive damages, and name as defendant approximately 50 petroleum refiners, manufacturers, distributors and retailers of MTBE, or gasoline containing MTBE. During 2010, we agreed to, and subsequently paid, \$1,725,000 to settle two plaintiff classes covering 52 pending cases. Presently, we remain a defendant in one MTBE case involving multiple locations throughout the State of New Jersey brought by various governmental agencies of the State of New Jersey, including the NJDEP.

As of December 31, 2012 and December 31, 2011, we maintained a litigation reserve representing our best estimate of loss relating to the remaining MTBE case in an amount which we believe was appropriate based on information then currently available. We are unable to estimate ranges in excess of the amount accrued with any certainty for the case involving the State of New Jersey as there remains uncertainty as to the accuracy of the allegations in this case as they relate to us, our defenses to the claims, our rights to indemnification and the aggregate possible amount of damages for which we may be held liable.

**4. CREDIT AGREEMENT AND TERM LOAN AGREEMENT**

As of December 31, 2012, we were a party to a \$175,000,000 amended and restated senior secured revolving credit agreement with a group of commercial banks led by JPMorgan Chase Bank, N.A. and a \$25,000,000 amended term loan agreement with TD Bank, both of which were scheduled to mature in March 2013. As of December 31, 2012, borrowings under the credit agreement were \$150,290,000 bearing interest at a rate of 3.25% per annum and borrowings under the term loan agreement were \$22,030,000 bearing interest at a rate of 3.50% per annum. Loan origination costs incurred in March 2012 of \$4,144,000 are being amortized over the one year extended terms of these debt agreements. On February 25, 2013, the borrowings then outstanding under such credit agreement and term loan agreement were repaid with cash on hand and proceeds of the Credit Agreement and the Prudential Loan Agreement (both defined below).

On February 25, 2013, we entered into a \$175,000,000 senior secured revolving credit agreement (the Credit Agreement) with a group of commercial banks led by JPMorgan Chase Bank, N.A. (the Bank Syndicate), which is scheduled to mature in August 2015. Subject to the terms of the Credit Agreement, we have the option to extend the term of the Credit Agreement for one additional year to August 2016. The Credit Agreement allocates \$25,000,000 of the total Bank Syndicate commitment to a term loan and \$150,000,000 to a revolving credit facility. Subject to the terms of the Credit Agreement we have the option to increase by \$50,000,000 the amount of the revolving credit facility to \$200,000,000. The Credit Agreement permits borrowings at an interest rate equal to the sum of a base rate plus a margin of 1.50% to 2.00% or a LIBOR rate plus a margin of 2.50% to 3.00% based on our leverage at the end of each quarterly reporting period. The annual commitment fee on the undrawn funds under the Credit Agreement is 0.30% to 0.40% based our leverage at the end of each quarterly reporting period. The Credit Agreement does not provide for scheduled reductions in the principal balance prior to its maturity.

The Credit Agreement provides for security in the form of, among other items, mortgage liens on certain of our properties. The parties to the Credit Agreement and the Prudential Loan Agreement (as defined below) share the security pursuant to the terms of an inter-creditor agreement. The Credit Agreement contains customary financial covenants such as loan to value, leverage and 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 Credit Agreement contains customary events of default, including default under the Prudential Loan Agreement, change of control and failure to maintain REIT status. Any event of default, if not cured or waived, would increase by 200 basis points (2.00%) the interest rate we pay under the Credit Agreement and prohibit us from drawing funds against the Credit Agreement and could result in the acceleration of our indebtedness under the Credit Agreement and could also give rise to an event of default and could result in the acceleration of our indebtedness under the Prudential Loan Agreement. We may be prohibited from drawing funds against the revolving credit facility if there is a material adverse effect on our business, assets, prospects or condition.

On February 25, 2013, we entered into a \$100,000,000 senior secured long-term loan agreement with the Prudential Insurance Company of America (the Prudential Loan Agreement), which matures in February 2021. The Prudential Loan Agreement bears interest at 6.00%. The Prudential Loan Agreement does not provide for scheduled reductions in the principal balance prior to its maturity. The parties to the Credit Agreement and the Prudential Loan Agreement share the security described above pursuant to the terms of an inter-creditor agreement. The Prudential Loan Agreement contains customary financial covenants such as loan to value, leverage and 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 Prudential Loan Agreement contains customary events of default, including default under the Credit Agreement and failure to maintain REIT status. Any event of default, if not cured or waived, would increase by 200 basis points (2.00%) the interest rate we pay under the Prudential Loan Agreement and could result in the acceleration of our indebtedness under the Prudential Loan Agreement and could also give rise to an event of default and could result in the acceleration of our indebtedness under our Credit Agreement.



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We repaid the then outstanding borrowings related to our debt outstanding as of December 31, 2012 partially with cash on hand and proceeds from the Credit Agreement and the Prudential Loan Agreement entered into in February 2013. The aggregate maturity of the Credit Agreement and the Prudential Loan Agreement as of February 25, 2013, is as follows: 2015 \$71,900,000 and 2021 \$100,000,000.

Due to the near-term maturity of our outstanding debt as of December 31, 2012, the carrying value of the borrowings outstanding as of December 31, 2012 approximated fair value which was determined using a discounted cash flow technique that incorporates a market interest yield curve based on market data obtained from sources independent of us that are observable at commonly quoted intervals and are defined by GAAP as Level 2 inputs in the Fair Value Hierarchy with adjustments for duration, optionality, risk profile and projected average borrowings outstanding or borrowings outstanding, which are based on unobservable Level 3 inputs. We classified our valuations of the borrowings outstanding under the amended credit agreement and the amended term loan agreement entirely within Level 3 of the Fair Value Hierarchy.

**5. INTEREST RATE SWAP AGREEMENT**

We were a party to a \$45,000,000 LIBOR based interest rate swap, effective through June 30, 2011 (the Swap Agreement). The Swap Agreement was intended to effectively fix, at 5.44%, the LIBOR component of the interest rate determined under our LIBOR based loan agreements. We entered into the Swap Agreement with JPMorgan Chase Bank, N.A., designated and qualifying as a cash flow hedge, to reduce our exposure to the variability in future cash flows attributable to changes in the LIBOR rate. Our primary objective when undertaking the hedging transaction and derivative position was to reduce our variable interest rate risk by effectively fixing a portion of the interest rate for existing debt and anticipated refinancing transactions. We determined that the derivative used in the hedging transaction was highly effective in offsetting changes in cash flows associated with the hedged item and that no gain or loss was required to be recognized in earnings during the year ended December 31, 2011 representing the hedge's ineffectiveness.

The fair values of the Swap Agreement obligation were determined using (i) discounted cash flow analyses on the expected cash flows of the Swap Agreement, which were based on market data obtained from sources independent of us consisting of interest rates and yield curves that are observable at commonly quoted intervals and are defined by GAAP as Level 2 inputs in the Fair Value Hierarchy, and (ii) credit valuation adjustments, which were based on unobservable Level 3 inputs. We classified our valuations of the Swap Agreement entirely within Level 2 of the Fair Value Hierarchy since the credit valuation adjustments were not significant to the overall valuations of the Swap Agreement.

**6. ENVIRONMENTAL OBLIGATIONS**

We are subject to numerous existing 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 include installing, operating, maintaining and decommissioning remediation systems, monitoring contamination and governmental agency reporting incurred in connection with contaminated properties. We seek reimbursement from state UST remediation funds related to these environmental costs where available. In July 2012, we purchased for \$3,062,000 a ten-year pollution legal liability insurance policy covering all of our properties for pre-existing 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 is to obtain protection predominantly for significant events. No assurances can be given that we will obtain a net financial benefit from this investment. Historically we did not maintain pollution legal liability insurance to protect from potential future claims related to known and unknown environmental liabilities.

We enter into leases and various other agreements which allocate responsibility for known and unknown environmental liabilities by establishing the percentage and method of allocating responsibility between the parties. In accordance with the leases with certain tenants, we have agreed to bring the leased properties with known environmental contamination to within applicable standards, and to either regulatory or contractual closure (Closure). Generally, upon achieving Closure at each individual property, our environmental liability under the lease for that property will be satisfied and future remediation obligations will be the responsibility of our tenant.

Generally, our tenants are directly responsible to pay for: (i) the retirement and decommissioning or removal of USTs and other equipment, (ii) remediation of environmental contamination they cause and compliance with various environmental laws and regulations as the operators of our properties, and (iii) environmental liabilities allocated to them under the terms of our leases and various other agreements. We are contingently liable for these obligations in the event that our tenants do not satisfy their

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responsibilities. Under the Master Lease, Marketing was responsible to pay for the retirement and decommissioning or removal of USTs at the end of their useful life or earlier if circumstances warranted as well as all environmental liabilities discovered during the term of the Master Lease, including: (i) remediation of environmental contamination Marketing caused and compliance with various environmental laws and regulations as the operator of our properties, and (ii) known and unknown environmental liabilities allocated to Marketing under the terms of the Master Lease and various other agreements with us relating to Marketing's business and the properties it leased from us (collectively the Marketing Environmental Liabilities). A liability has not been accrued for obligations that are the responsibility of our tenants (other than the Marketing Environmental Liabilities accrued in the fourth quarter of 2011) based on our tenants' history of paying such obligations and/or our assessment of their financial ability and intent to pay their share of such costs. 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.

In the fourth quarter of 2011, since we could no longer assume that Marketing would be able to meet its environmental remediation obligations at 246 properties and its obligations to remove all underground storage tanks at the end of their useful life or earlier if circumstances warrant, we accrued \$47,874,000 as the aggregate Marketing Environmental Liabilities. In conjunction with recording the Marketing Environmental Liabilities, we increased the carrying value for each of the properties by the amount of the related estimated environmental obligation and simultaneously recorded impairment charges aggregating \$17,017,000 where the accumulation of asset retirement costs increased the carrying value of the property above its estimated fair value.

As part of certain triple-net leases whose term commenced through December 31, 2012, 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 life or earlier if circumstances warranted was fully or partially transferred to our new tenants. Accordingly, during the year ended December 31, 2012, we removed \$11,153,000 of asset retirement obligations and \$9,795,000 of net asset retirement costs related to USTs from our balance sheet. The net amount of \$1,358,000 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. (See note 2 for additional information.)

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 various other agreements if we determine that it is probable that the counterparty will not meet its environmental obligations. 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.

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 the best 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.

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. 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.

Environmental remediation obligations are initially measured at fair value based on their expected future net cash flows which have been adjusted for inflation and discounted to present value. As of December 31, 2012, 2011, 2010 and 2009, we had accrued \$46,150,000, \$57,700,000, \$10,908,000 and \$12,645,000, respectively, as our best estimate of the fair value of reasonably estimable environmental remediation obligations net of estimated recoveries and obligations to remove USTs. Environmental liabilities are accreted for the change in present value due to the passage of time and, accordingly, \$3,174,000, \$899,000 and \$775,000 of net accretion expense was recorded for the years ended December 31, 2012, 2011 and 2010, respectively, which is included in environmental expenses. In addition, during the year ended December 31, 2012 we recorded credits aggregating \$4,154,000 to environmental expenses 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 provisions for environmental litigation loss reserves.

During the years ended December 31, 2012 and 2011, we increased the carrying value of certain of our properties by \$5,710,000 and \$47,874,000, respectively, due to increases in estimated remediation costs. The recognition, and subsequent changes in estimates, in environmental liabilities and the increase or decrease in carrying value of the properties are non-cash transactions



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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 underground storage tank, a ten year period if the increase in carrying value 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 included in our consolidated statements of operations for the years ended December 31, 2012 and 2011 include \$5,371,000 and \$855,000, respectively, of depreciation related to capitalized asset retirement costs of \$23,549,000 and \$35,321,000 as of December 31, 2012 and 2011, respectively.

We cannot predict what environmental legislation or regulations may be enacted in the future or how existing laws or regulations will be administered or interpreted with respect to products or activities to which they have not previously been applied. We cannot predict if state UST fund programs will be administered and funded in the future in a manner that is consistent with past practices and if future environmental spending will continue to be eligible for reimbursement at historical recovery rates under these programs. Compliance with more stringent laws or regulations, as well as more vigorous enforcement policies of the regulatory agencies or stricter interpretation of existing laws, which may develop in the future, could have an adverse effect on our financial position, or that of our tenants, and could require substantial additional expenditures for future remediation.

In view 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 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 financial statements as they become probable and a reasonable estimate of fair value can be made. Future environmental expenses could cause a material adverse effect on our business, financial condition, results of operations, liquidity, ability to pay dividends or stock price.

**7. INCOME TAXES**

Net cash paid for income taxes for the years ended December 31, 2012, 2011 and 2010 of \$810,000, \$267,000 and \$365,000, respectively, includes amounts related to state and local income taxes for jurisdictions that do not follow the federal tax rules, which are provided for in rental property expenses in our consolidated statements of operations.

Earnings and profits (as defined in the Internal Revenue Code) are used to determine the tax attributes of dividends paid to stockholders and will differ from income reported for financial statement purposes due to the effect of items which are reported for income tax purposes in years different from that in which they are recorded for financial statement purposes. Earnings and profits were \$7,814,000, \$63,472,000 and \$50,563,000 for the years ended December 31, 2012, 2011 and 2010, respectively. The federal tax attributes of the common dividends for the years ended December 31, 2012, 2011 and 2010 were: ordinary income of 10.0%, 98.3% and 97.5%, capital gain distributions of 61.3%, 1.7% and 0.4% and non-taxable distributions of 28.7%, 0.0% and 2.1%, respectively.

To qualify for taxation as a REIT, we, among other requirements such as those related to the composition of our assets and gross income, must 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. The Internal Revenue Service ( IRS ) has allowed the use of a procedure, as a result of which we could satisfy the REIT income distribution requirement by making a distribution on our common stock comprised of (i) shares of our common stock having a value of up to 80% of the total distribution and (ii) cash in the remaining amount of the total distribution, in lieu of paying the distribution entirely in cash. In order to use this procedure, we would need to seek and obtain a private letter ruling of the IRS to the effect that the procedure is applicable to our situation. Without obtaining such a private letter ruling, we cannot provide any assurance that we will be able to satisfy our REIT income distribution requirement by making distributions payable in whole or in part in shares of our common stock. Should the Internal Revenue Service successfully assert that our earnings and profits were greater than the amount distributed, we may fail to qualify as a REIT; however, we may avoid losing our REIT status by paying a deficiency dividend to eliminate any remaining earnings and profits. We may have to borrow money or sell assets to pay such a deficiency dividend. Although tax returns for the years 2009, 2010 and 2011, and tax returns which will be filed for the year ended 2012 remain open to examination by federal and state tax jurisdictions under the respective statute of limitations, we have not currently identified any uncertain tax positions related to those years and, accordingly, have not accrued for uncertain tax positions as of December 31, 2012 or 2011. However, uncertain tax matters may have a significant impact on the results of operations for any single fiscal year or interim period.

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A summary of the changes in shareholders' equity for the years ended December 31, 2012, 2011 and 2010 is as follows (in thousands, except per share amounts):

|   | COMMON STOCK  |               | PAID-IN           | DIVIDEND           | ACCUMULATED    |                   |
|---|---------------|---------------|-------------------|--------------------|----------------|-------------------|
|   | SHARES        | AMOUNT        | CAPITAL           | PAID               | OTHER          | TOTAL             |
|   |               |               |                   | IN EXCESS          | COMPREHENSIVE  |                   |
|   |               |               |                   | OF EARNINGS        | LOSS           |                   |
| BALANCE, DECEMBER 31, 2009                | 24,766        | \$ 248        | \$ 259,459        | \$ (49,045)        | \$ (2,993)     | \$ 207,669        |
| Net earnings                              |               |               |                   | 51,700             |                | 51,700            |
| Dividends \$1.91 per share                |               |               |                   | (54,959)           |                | (54,959)          |
| Stock-based compensation                  | 1             |               | 480               |                    |                | 480               |
| Stock options exercised                   | 2             |               |                   |                    |                |                   |
| Proceeds from issuance of common stock    | 5,175         | 51            | 108,154           |                    |                | 108,205           |
| Net unrealized gain on interest rate swap |               |               |                   |                    | 1,840          | 1,840             |
| <b>BALANCE, DECEMBER 31, 2010</b>         | <b>29,944</b> | <b>299</b>    | <b>368,093</b>    | <b>(52,304)</b>    | <b>(1,153)</b> | <b>314,935</b>    |
| Net earnings                              |               |               |                   | 12,456             |                | 12,456            |
| Dividends \$1.46 per share                |               |               |                   | (49,004)           |                | (49,004)          |
| Stock-based compensation                  |               |               | 643               |                    |                | 643               |
| Stock options exercised                   |               |               |                   |                    |                |                   |
| Proceeds from issuance of common stock    | 3,450         | 35            | 91,951            |                    |                | 91,986            |
| Net unrealized gain on interest rate swap |               |               |                   |                    | 1,153          | 1,153             |
| <b>BALANCE, DECEMBER 31, 2011</b>         | <b>33,394</b> | <b>334</b>    | <b>460,687</b>    | <b>(88,852)</b>    | <b>\$</b>      | <b>372,169</b>    |
| Net earnings                              |               |               |                   | 12,447             |                | 12,447            |
| Dividends \$0.375 per share               |               |               |                   | (12,606)           |                | (12,606)          |
| Stock-based compensation                  | 3             |               | 739               |                    |                | 739               |
| <b>BALANCE, DECEMBER 31, 2012</b>         | <b>33,397</b> | <b>\$ 334</b> | <b>\$ 461,426</b> | <b>\$ (89,011)</b> | <b>\$</b>      | <b>\$ 372,749</b> |

We are authorized to issue 20,000,000 shares of preferred stock, par value \$.01 per share, of which none were issued as of December 31, 2012, 2011 and 2010.

In the first quarter of 2011, we completed a public stock offering of 3,450,000 shares of our common stock, of which 3,000,000 shares were issued in January 2011 and 450,000 shares, representing the underwriter's over-allotment, were issued in February 2011. Substantially all of the aggregate \$91,986,000 net proceeds from the issuance of common stock (after related transaction costs of \$267,000) was used to repay a portion of our outstanding indebtedness and the remainder was used for general corporate purposes.

During the second quarter of 2010, we completed a public stock offering of 5,175,000 shares of our common stock. The \$108,205,000 net proceeds from the issuance of common stock (after related transaction costs of \$522,000) was used in part to repay a portion of our outstanding indebtedness and the remainder was used for general corporate purposes.

**9. EMPLOYEE BENEFIT PLANS**

The Getty Realty Corp. 2004 Omnibus Incentive Compensation Plan (the "2004 Plan") provides for the grant of restricted stock, restricted stock units, performance awards, dividend equivalents, stock payments and stock awards to all employees and members of the Board of Directors. The 2004 Plan authorizes us to grant awards with respect to an aggregate of 1,000,000 shares of common stock through 2014. The aggregate maximum number of shares of common stock that may be subject to awards granted under the 2004 Plan during any calendar year is 80,000.

We awarded to employees and directors 52,125, 47,625 and 37,600 restricted stock units ("RSUs") and dividend equivalents in 2012, 2011 and 2010, respectively. RSUs granted before 2009 provide for settlement upon termination of employment with the Company or termination of



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service from the Board of Directors and RSUs granted in 2009 and thereafter upon the earlier of 10 (ten) years after grant or termination. On the settlement date each vested RSU will have a value equal to one share of common stock and may be settled, at the sole discretion of the Compensation Committee, in cash or by the issuance of one share of common stock. The RSUs do not provide voting or other shareholder rights unless and until the RSU is settled for a share of common stock. The RSUs vest starting one year from the date of grant, on a cumulative basis at the annual rate of 20% of the total number of RSUs covered by the award. The dividend equivalents represent the value of the dividends paid per common share multiplied by the number of RSUs covered by the award. For the years ended December 31, 2012, 2011 and 2010, dividend equivalents aggregating approximately \$82,000, \$249,000 and \$228,000, respectively, were charged against retained earnings when common stock dividends were declared.

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The following is a schedule of the activity relating to the restricted stock units outstanding:

|                                       | NUMBER OF           | FAIR VALUE   |                    |
|---------------------------------------|---------------------|--------------|--------------------|
|                                       | RSUs<br>OUTSTANDING | AMOUNT       | AVERAGE<br>PER RSU |
| RSUs OUTSTANDING AT DECEMBER 31, 2009 | 85,600              |              |                    |
| Granted                               | 37,600              | \$ 864,000   | \$ 22.97           |
| RSUs OUTSTANDING AT DECEMBER 31, 2010 | 123,200             |              |                    |
| Granted                               | 47,625              | \$ 1,043,000 | \$ 21.90           |
| RSUs OUTSTANDING AT DECEMBER 31, 2011 | 170,825             |              |                    |
| Granted                               | 52,125              | \$ 864,000   | \$ 16.57           |
| Settled                               | (2,780)             | \$ 70,000    | \$ 25.31           |
| Cancelled                             | (3,820)             | \$ 88,000    | \$ 23.10           |
| RSUs OUTSTANDING AT DECEMBER 31, 2012 | 216,350             |              |                    |

The fair values of the RSUs were determined based on the closing market price of our stock on the date of grant. The fair value of the grants is recognized as compensation expense ratably over the five-year vesting period of the RSUs. Compensation expense related to RSUs for the years ended December 31, 2012, 2011 and 2010 was \$746,000, \$638,000 and \$466,000, respectively, and is included in general and administrative expense in the accompanying consolidated statements of operations. As of December 31, 2012, there was \$1,825,000 of unrecognized compensation cost related to RSUs granted under the 2004 Plan which cost is expected to be recognized over a weighted average period of approximately 2.6 years. The aggregate intrinsic value of the 216,350 outstanding RSUs and the 93,225 vested RSUs as of December 31, 2012 was \$3,907,000 and \$1,684,000, respectively.

The following is a schedule of the vesting activity relating to the restricted stock units outstanding:

|                                  | NUMBER<br>OF RSUs<br>VESTED | FAIR<br>VALUE |
|----------------------------------|-----------------------------|---------------|
| RSUs VESTED AT DECEMBER 31, 2009 | 29,800                      |               |
| Vested                           | 15,600                      | \$ 379,000    |
| RSUs VESTED AT DECEMBER 31, 2010 | 45,400                      |               |
| Vested                           | 21,400                      | \$ 505,000    |
| RSUs VESTED AT DECEMBER 31, 2011 | 66,800                      |               |
| Vested                           | 29,205                      | \$ 734,000    |
| Settled                          | (2,780)                     | \$ 70,000     |
| RSUs VESTED AT DECEMBER 31, 2012 | 93,225                      |               |

We have a retirement and profit sharing plan with deferred 401(k) savings plan provisions (the Retirement Plan) for employees meeting certain service requirements and a supplemental plan for executives (the Supplemental Plan). Under the terms of these plans, the annual discretionary contributions to the plans are determined by the Compensation Committee of the Board of Directors.

Also, under the Retirement Plan, employees may make voluntary contributions and we have elected to match an amount equal to fifty percent of such contributions but in no event more than three percent of the employee's eligible compensation. Under the Supplemental Plan, a participating executive may receive an amount equal to ten percent of eligible compensation, reduced by the amount of any contributions allocated to such executive under the Retirement Plan. Contributions, net of forfeitures, under the retirement plans approximated \$270,000, \$239,000 and

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\$220,000 for the years ended December 31, 2012, 2011 and 2010, respectively. These amounts are included in general and administrative expense in the accompanying consolidated statements of operations.

We have a stock option plan (the Stock Option Plan ). Our authorization to grant options to purchase shares of our common stock under the Stock Option Plan has expired. During the year ended December 31, 2010, 5,250 options were exercised with an intrinsic value of \$76,000. As of December 31, 2012, there were 5,000 options outstanding which were exercisable at \$27.68 with a remaining contractual life of five years. As of December 31, 2012, the 5,000 options outstanding had no intrinsic value.

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The following is a summary of the quarterly results of operations for the years ended December 31, 2012 and 2011 (unaudited as to quarterly information) (in thousands, except per share amounts):

| YEAR ENDED DECEMBER 31, 2012(a)           | THREE MONTHS ENDED |           |               |              | YEAR ENDED DECEMBER 31, |
|---|--------------------|-----------|---------------|--------------|-------------------------|
|   | MARCH 31,          | JUNE 30,  | SEPTEMBER 30, | DECEMBER 31, |                         |
| Revenues from rental properties           | \$ 28,035          | \$ 25,434 | \$ 22,324     | \$ 23,493    | \$ 99,286               |
| Earnings from continuing operations       | 5,307              | 2,357     | 1,782         | 4,362        | 13,808                  |
| Net earnings (loss)                       | 6,485              | 3,626     | (3,465)       | 5,801        | 12,447                  |
| Diluted earnings (loss) per common share: |                    |           |               |              |                         |
| Earnings from continuing operations       | .16                | .07       | .05           | .13          | .41                     |
| Net earnings (loss)                       | .19                | .11       | (.10)         | .17          | .37                     |

| YEAR ENDED DECEMBER 31, 2011(b)            | THREE MONTHS ENDED |           |               |              | YEAR ENDED DECEMBER 31, |
|--|--------------------|-----------|---------------|--------------|-------------------------|
|  | MARCH 31,          | JUNE 30,  | SEPTEMBER 30, | DECEMBER 31, |                         |
| Revenues from rental properties            | \$ 23,444          | \$ 24,502 | \$ 24,724     | \$ 27,593    | \$ 100,263              |
| Earnings (loss) from continuing operations | 10,231             | 13,016    | 2,635         | (16,458)     | 9,424                   |
| Net earnings (loss)                        | 11,386             | 15,202    | 5,350         | (19,482)     | 12,456                  |
| Diluted earnings (loss) per common share:  |                    |           |               |              |                         |
| Earnings (loss) from continuing operations | .31                | .39       | .08           | (.49)        | .28                     |
| Net earnings (loss)                        | .35                | .45       | .16           | (.58)        | .37                     |

(a) Includes for the respective periods the effect of:

An accounts receivable reserve of \$13,980,000, related to Marketing, recorded in the year ended December 31, 2012, net of a partial reversal of \$1,781,000 recorded in the quarter ended December 31, 2012. (See footnotes 2 and 3 for additional information.)

Impairment charges of \$13,942,000 recorded for the year ended December 31, 2012, of which \$3,390,000 was recorded in the quarter ended December 31, 2012. (See footnote 3 for additional information.)

(b) Includes for the respective periods the effect of:

The January 13, 2011 acquisition of gasoline station and convenience store properties in a sale/leaseback and loan transaction with CPD NY Energy Corp. for \$111,621,000 and the March 31, 2011 acquisition of gasoline station and convenience store properties in a sale/leaseback transaction with Nouria Energy Ventures I, LLC for \$87,047,000. (See footnote 11 for additional information.)

Allowances for deferred rent receivables of \$8,715,000 and \$11,043,000, related to Marketing, which were recorded in the quarters ended September 30, 2011 and December 31, 2011, respectively. (See footnotes 2 and 3 for additional information.)

An accounts receivable reserve of \$8,802,000, related to Marketing, recorded in the quarter ended December 31, 2011. (See footnotes 2 and 3 for additional information.)

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Impairment charges of \$20,200,000 recorded for the year ended December 31, 2011, of which \$17,132,000 was recorded in the quarter ended December 31, 2011. (See footnote 3 for additional information.)

### **11. PROPERTY ACQUISITIONS**

In 2012, we acquired fee or leasehold title to five gasoline station and convenience store properties in separate transactions for an aggregate purchase price of \$5,159,000.

#### *CPD NY SALE/LEASEBACK*

On January 13, 2011, we acquired fee or leasehold title to 59 Mobil-branded gasoline station and convenience store properties and also took a security interest in six other Mobil-branded gasoline stations and convenience store properties in a sale/leaseback and loan transaction with CPD NY Energy Corp. ( CPD NY ), a subsidiary of Chestnut Petroleum Dist. Inc. Our total investment in the transaction was \$111,621,000 including acquisition costs, which was financed entirely with borrowings under our revolving credit facility.

The properties were acquired or financed in a simultaneous transaction among ExxonMobil, CPD NY and us whereby CPD NY acquired a portfolio of 65 gasoline station and convenience stores from ExxonMobil and simultaneously completed a sale/leaseback of 59 of the acquired properties and leasehold interests with us. The lease between us, as lessor, and CPD NY, as lessee, governing the properties is a unitary triple-net lease agreement (the CPD Lease ), with an initial term of 15 years, and options for up to three successive renewal terms of ten years each. The CPD Lease requires CPD NY to pay a fixed annual rent for the properties (the

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Rent ), plus an amount equal to all rent due to third-party landlords pursuant to the terms of third-party leases. The Rent is scheduled to increase on the third anniversary of the date of the CPD Lease and on every third anniversary thereafter. As a triple-net lessee, CPD NY is required to pay all amounts pertaining to the properties subject to the CPD Lease, including taxes, assessments, licenses and permit fees, charges for public utilities and all governmental charges. Partial funding to CPD NY for the transaction was also provided by us under a secured, self-amortizing loan having a 10-year term (the CPD Loan ).

We accounted for this transaction as a business combination. We estimated the fair value of acquired tangible assets (consisting of land, buildings and equipment) as if vacant and intangible assets consisting of above-market and below-market leases. Based on these estimates, we allocated \$60,610,000 of the purchase price to land, net above-market and below-market leases related to leasehold interests as lessee of \$953,000 which is accounted for as a deferred asset, net above-market and below-market leases related to leasehold interests as lessor of \$2,516,000 which is accounted for as a deferred liability, \$38,752,000 allocated to direct financing leases and capital lease assets, and \$18,400,000 which is accounted for in notes, mortgages and accounts receivable, net. In connection with the acquisition of certain leasehold interests, we also recorded capital lease obligations aggregating \$5,768,000. We also incurred transaction costs of \$1,190,000 directly related to the acquisition which is included in general and administrative expenses on the consolidated statement of operations.

**NOURIA SALE/LEASEBACK**

On March 31, 2011, we acquired fee or leasehold title to 66 Shell-branded gasoline station and convenience store properties in a sale/leaseback transaction with Nouria Energy Ventures I, LLC ( Nouria ), a subsidiary of Nouria Energy Group. Our total investment in the transaction was \$87,047,000 including acquisition costs, which was financed entirely with borrowings under our revolving credit facility.

The properties were acquired in a simultaneous transaction among Motiva Enterprises LLC ( Shell ), Nouria and us whereby Nouria acquired a portfolio of 66 gasoline station and convenience stores from Shell and simultaneously completed a sale/leaseback of the 66 acquired properties and leasehold interests with us. The lease between us, as lessor, and Nouria, as lessee, governing the properties is a unitary triple-net lease agreement (the Nouria Lease ), with an initial term of 20 years, and options for up to two successive renewal terms of ten years each followed by one final renewal term of five years. The Nouria Lease requires Nouria to pay a fixed annual rent for the properties (the Rent ), plus an amount equal to all rent due to third-party landlords pursuant to the terms of third-party leases. The Rent is scheduled to increase on every annual anniversary of the date of the Nouria Lease. As a triple-net lessee, Nouria is required to pay all amounts pertaining to the properties subject to the Nouria Lease, including taxes, assessments, licenses and permit fees, charges for public utilities and all governmental charges.

We accounted for this transaction as a business combination. We estimated the fair value of acquired tangible assets (consisting of land, buildings and equipment) as if vacant and intangible assets consisting of above-market and below-market leases. Based on these estimates, we allocated \$37,875,000 of the purchase price to land, net above-market and below-market leases relating to leasehold interests as lessee of \$3,895,000, which is accounted for as a deferred asset, net above-market and below-market leases related to leasehold interests as lessor of \$3,768,000, which is accounted for as a deferred liability, \$37,315,000 allocated to direct financing leases and capital lease assets and \$12,000,000 which is accounted for in notes, mortgages and accounts receivable, net. In connection with the acquisition of certain leasehold interests, we also recorded capital lease obligations aggregating \$1,114,000. We also incurred transaction costs of \$844,000 directly related to the acquisition which is included in general and administrative expenses on the consolidated statement of operations.

In 2010, we purchased fee title to three gasoline and convenience store properties in separate transactions for an aggregate purchase price of \$3,567,000.

**Table of Contents***UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION*

The following unaudited pro forma condensed consolidated financial information for the years ended December 31, 2011 and 2010 have been prepared utilizing the historical financial statements of Getty Realty Corp. and the combined effect of additional revenue and expenses from the properties acquired from both CPD NY and Nouria assuming that the acquisitions had occurred as of the beginning of the earliest period presented, after giving effect to certain adjustments including: (a) rental income adjustments resulting from the straight-lining of scheduled rent increases; (b) rental income adjustments resulting from the recognition of revenue under direct financing leases over the lease term using the effective interest rate method which produces a constant periodic rate of return on the net investment in the leased properties; (c) rental income adjustments resulting from the amortization of above-market leases with tenants; and (d) rent expense adjustments resulting from the amortization of below-market leases with landlords. The following information also gives effect to the additional interest expense resulting from the assumed increase in borrowings outstanding under its revolving credit facility to fund the acquisitions and the elimination of acquisition costs. The unaudited pro forma condensed financial information is not indicative of the results of operations that would have been achieved had the acquisition from CPD NY and Nouria reflected herein been consummated on the date indicated or that will be achieved in the future.

| <b>(in thousands)</b>                           | <b>Year Ended December 31,</b> |             |
|---|--------------------------------|-------------|
|   | <b>2011</b>                    | <b>2010</b> |
| Revenues  | \$ 102,844                     | \$ 99,363   |
| Net earnings                                    | \$ 14,647                      | \$ 69,422   |
| Basic and diluted net earnings per common share | \$ 0.44                        | \$ 2.48     |

**12. SUPPLEMENTAL CONDENSED COMBINING FINANCIAL INFORMATION**

Condensed combining financial information as of December 31, 2011 and for the years ended December 31, 2011 and 2010 has been derived from our books and records and is provided below to illustrate, for informational purposes only, the net contribution to our financial results that were realized from the Master Lease with Marketing and from properties leased to other tenants. As a result of the rejection of the Master Lease on April 30, 2012, our financial results are no longer materially dependent on the performance of Marketing to meet its obligations to us under the Master Lease.

The condensed combining financial information set forth below presents the results of operations, net assets and cash flows related to Marketing and the Master Lease, our other tenants and our corporate functions necessary to arrive at the information for us on a combined basis. The assets, liabilities, lease agreements and other leasing operations attributable to the Master Lease and other tenant leases are not segregated in legal entities. However, we generally maintain our books and records in site specific detail and have classified the operating results which are clearly applicable to each owned or leased property as attributable to Marketing or our other tenants or to non-operating corporate functions. The condensed combining financial information has been prepared by us using certain assumptions, judgments and allocations. In our prior filings, each of our properties were classified as attributable to Marketing, other tenants or corporate for all periods presented based on the property's use as of the latest balance sheet date included in such filing or the property's use immediately prior to its disposition or third-party lease expiration.

As a result of the rejection of the Master Lease on April 30, 2012, we have omitted the condensed combining financial information as of December 31, 2012 and for the year ended December 31, 2012 since our financial results are no longer materially dependent on the performance of Marketing to meet its obligations to us under the Master Lease. For the historical condensed combining financial information set forth below, each of the properties were classified based on the property's use as of December 31, 2011.

Environmental remediation expenses have been attributed to Marketing or other tenants on a site specific basis and environmental related litigation expenses and professional fees have been attributed to Marketing or other tenants based on the pro rata share of specifically identifiable environmental expenses for the period from January 1, 2010 through December 31, 2011.

The heading Corporate in the statements below includes assets, liabilities, income and expenses attributed to general and administrative functions, financing activities and parent or subsidiary level income taxes, capital taxes or franchise taxes which were not incurred on behalf of our leasing operations and are not reasonably allocable to Marketing or other tenants. With respect to general and administrative expenses, we have attributed those expenses clearly applicable to Marketing and other tenants. We considered various methods of allocating to Marketing and other tenants amounts included under the heading Corporate and determined that none of the methods resulted in a reasonable allocation of such amounts or an allocation of such amounts that more clearly summarizes the net contribution to our financial results realized from the leasing operations of properties previously leased to Marketing and of properties leased to other tenants. Moreover, we determined that each of the

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allocation methods we considered resulted in a presentation of these amounts that would make it more difficult to understand the clearly identifiable results from our leasing operations attributable to Marketing and other tenants. We believe that the segregated presentation of assets, liabilities, income and expenses attributed to general and administrative functions, financing activities and parent or subsidiary level income taxes, capital taxes or franchise taxes provides the most meaningful presentation of these amounts since changes in these amounts are not fully correlated to changes in our leasing activities.

While we believe these assumptions, judgments and allocations are reasonable, the condensed combining financial information is not intended to reflect what the net results would have been had assets, liabilities, lease agreements and other operations attributable to Marketing or our other tenants been conducted through stand-alone entities during any of the periods presented.



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The condensed combining statement of operations of Getty Realty Corp. for the year ended December 31, 2011 is as follows (in thousands):

|  | Getty<br>Petroleum<br>Marketing | Other<br>Tenants | Corporate       | Consolidated    |
|--|---------------------------------|------------------|-----------------|-----------------|
| Revenues from rental properties              | \$ 52,163                       | \$ 48,100        | \$              | \$ 100,263      |
| Interest on notes and mortgages receivable   |                                 | 2,489            | 169             | 2,658           |
| <b>Total revenues</b>                        | <b>52,163</b>                   | <b>50,589</b>    | <b>169</b>      | <b>102,921</b>  |
| Operating expenses:                          |                                 |                  |                 |                 |
| Rental property expenses                     | (8,111)                         | (7,271)          | (641)           | (16,023)        |
| Impairment charges                           | (14,641)                        | (1,263)          |                 | (15,904)        |
| Environmental expenses                       | (5,475)                         | (122)            |                 | (5,597)         |
| General and administrative expenses          | (8,899)                         | (1,783)          | (11,383)        | (22,065)        |
| Allowance for deferred rent receivable       | (19,288)                        |                  |                 | (19,288)        |
| Depreciation and amortization expense        | (4,234)                         | (5,231)          | (46)            | (9,511)         |
| <b>Total operating expenses</b>              | <b>(60,648)</b>                 | <b>(15,670)</b>  | <b>(12,070)</b> | <b>(88,388)</b> |
| Operating income (loss)                      | (8,485)                         | 34,919           | (11,901)        | 14,533          |
| Other income, net                            | 641                             | (621)            | (4)             | 16              |
| Interest expense                             |                                 |                  | (5,125)         | (5,125)         |
| Earnings (loss) from continuing operations   | (7,844)                         | 34,298           | (17,030)        | 9,424           |
| Discontinued operations:                     |                                 |                  |                 |                 |
| Income (loss) from operating activities      | 2,338                           | (254)            |                 | 2,084           |
| Gains on dispositions of real estate         |                                 | 948              |                 | 948             |
| <b>Earnings from discontinued operations</b> | <b>2,338</b>                    | <b>694</b>       |                 | <b>3,032</b>    |
| Net earnings (loss)                          | \$ (5,506)                      | \$ 34,992        | \$ (17,030)     | \$ 12,456       |

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The condensed combining statement of operations of Getty Realty Corp. for the year ended December 31, 2010 is as follows (in thousands):

|   | <b>Getty<br/>Petroleum<br/>Marketing</b> | <b>Other<br/>Tenants</b> | <b>Corporate</b>   | <b>Consolidated</b> |
|---|--|--------------------------|--------------------|---------------------|
| Revenues from rental properties                     | \$ 48,755                                | \$ 29,472                | \$                 | \$ 78,227           |
| Interest on notes and mortgages receivable          |  |                          | 133                | 133                 |
| <b>Total revenues</b>                               | <b>48,755</b>                            | <b>29,472</b>            | <b>133</b>         | <b>78,360</b>       |
| Operating expenses:                                 |  |                          |                    |                     |
| Rental property expenses                            | (7,024)                                  | (2,551)                  | (478)              | (10,053)            |
| Environmental expenses                              | (5,244)                                  | (127)                    |                    | (5,371)             |
| General and administrative expenses                 | (146)                                    | (135)                    | (7,897)            | (8,178)             |
| Depreciation and amortization expense               | (3,548)                                  | (5,412)                  | (37)               | (8,997)             |
| <b>Total operating expenses</b>                     | <b>(15,962)</b>                          | <b>(8,225)</b>           | <b>(8,412)</b>     | <b>(32,599)</b>     |
| Operating income (loss)                             | 32,793                                   | 21,247                   | (8,279)            | 45,761              |
| Other income, net                                   | (172)                                    | 172                      | 156                | 156                 |
| Interest expense                                    |  |                          | (5,050)            | (5,050)             |
| <b>Earnings (loss) from continuing operations</b>   | <b>32,621</b>                            | <b>21,419</b>            | <b>(13,173)</b>    | <b>40,867</b>       |
| Discontinued operations:                            |  |                          |                    |                     |
| Loss from operating activities                      | 9,042                                    | 86                       |                    | 9,128               |
| Gains (loss) on dispositions of real estate         | 1,857                                    | (152)                    |                    | 1,705               |
| <b>Earnings (loss) from discontinued operations</b> | <b>10,899</b>                            | <b>(66)</b>              |                    | <b>10,833</b>       |
| <b>Net earnings (loss)</b>                          | <b>\$ 43,520</b>                         | <b>\$ 21,353</b>         | <b>\$ (13,173)</b> | <b>\$ 51,700</b>    |

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The condensed combining balance sheet of Getty Realty Corp. as of December 31, 2011 is as follows (in thousands):

|  | Getty<br>Petroleum<br>Marketing | Other<br>Tenants  | Corporate           | Consolidated      |
|--|---------------------------------|-------------------|---------------------|-------------------|
| <b>ASSETS:</b>                                 |                                 |                   |                     |                   |
| Real Estate:                                   |                                 |                   |                     |                   |
| Land   | \$ 131,076                      | \$ 214,397        | \$                  | \$ 345,473        |
| Buildings and improvements                     | 170,553                         | 99,479            | 349                 | 270,381           |
|  | 301,629                         | 313,876           | 349                 | 615,854           |
| Less accumulated depreciation and amortization | (107,480)                       | (29,446)          | (191)               | (137,117)         |
| Real estate held for use, net                  | 194,149                         | 284,430           | 158                 | 478,737           |
| Net investment in direct financing leases      |                                 | 92,632            |                     | 92,632            |
| Deferred rent receivable, net                  |                                 | 8,080             |                     | 8,080             |
| Cash and cash equivalents                      |                                 |                   | 7,698               | 7,698             |
| Notes, mortgages and accounts receivable, net  | 5,743                           | 28,262            | 2,078               | 36,083            |
| Prepaid expenses and other assets              |                                 | 7,611             | 4,248               | 11,859            |
| <b>Total assets</b>                            | <b>199,892</b>                  | <b>421,015</b>    | <b>14,182</b>       | <b>635,089</b>    |
| <b>LIABILITIES:</b>                            |                                 |                   |                     |                   |
| Borrowings under credit line                   |                                 |                   | 147,700             | 147,700           |
| Term loan                                      |                                 |                   | 22,810              | 22,810            |
| Environmental remediation obligations          | 57,368                          | 332               |                     | 57,700            |
| Dividends payable                              |                                 |                   |                     |                   |
| Accounts payable and accrued liabilities       | 4,002                           | 19,564            | 11,144              | 34,710            |
| <b>Total liabilities</b>                       | <b>61,370</b>                   | <b>19,896</b>     | <b>181,654</b>      | <b>262,920</b>    |
| <b>Net assets (liabilities)</b>                | <b>\$ 138,522</b>               | <b>\$ 401,119</b> | <b>\$ (167,472)</b> | <b>\$ 372,169</b> |

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The condensed combining statement of cash flows of Getty Realty Corp. for the year ended December 31, 2011 is as follows (in thousands):

|   | Getty<br>Petroleum<br>Marketing | Other<br>Tenants | Corporate   | Consolidated |
|---|---------------------------------|------------------|-------------|--------------|
| <b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>  |                                 |                  |             |              |
| Net earnings (loss)   | \$ (5,506)                      | \$ 34,992        | \$ (17,030) | \$ 12,456    |
| Adjustments to reconcile net earnings (loss) to net cash flow provided by operating activities: |                                 |                  |             |              |
| Depreciation and amortization expense   | 5,024                           | 5,266            | 46          | 10,336       |
| Impairment charges  | 18,676                          | 1,550            |             | 20,226       |
| Gains on dispositions of real estate  | (641)                           | (327)            |             | (968)        |
| Deferred rent receivable, net of allowance  | 1,463                           | (1,916)          |             | (453)        |
| Allowance for deferred rent and accounts receivable   | 28,879                          |                  |             | 28,879       |
| Amortization of above-market and below-market leases  |                                 | (685)            |             | (685)        |
| Amortization of credit agreement origination costs  |                                 |                  | 207         | 207          |
| Accretion expense   | 879                             | 20               |             | 899          |
| Stock-based employee compensation expense   |                                 |                  | 643         | 643          |
| Changes in assets and liabilities:  |                                 |                  |             |              |
| Accounts receivable, net  | (14,851)                        | (39)             |             | (14,890)     |
| Prepaid expenses and other assets   | &nbs                            |                  |             |              |