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Empire State Realty Trust, Inc.  
Form 10-Q  
November 08, 2016

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

FORM 10-Q

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

For the Quarterly Period Ended September 30, 2016

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

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number: 001-36105

EMPIRE STATE REALTY TRUST, INC.

(Exact name of Registrant as specified in its charter)

Maryland 37-1645259  
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

111 West 33rd Street

New York, New York 10120

(Address of principal executive offices) (Zip Code)

(212) 687-8700

(Registrant's telephone number, including area code)

Former Address

One Grand Central Place

60 East 42nd Street

New York, New York 10165

(Address of principal executive offices) (Zip Code)

(212) 687-8700

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically 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 (§232.405 of this chapter) 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 whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

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

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class A Common Stock, par value \$0.01 per share	153,941,429
Class B Common Stock, par value \$0.01 per share	1,096,495
(Class)	(Outstanding on November 1, 2016)

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FORM 10-Q FOR THE QUARTER ENDED SEPTEMBER 30, 2016		
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## ITEM 1. FINANCIAL STATEMENTS

Empire State Realty Trust, Inc.

Condensed Consolidated Balance Sheets

(amounts in thousands, except share and per share amounts)

	September 30, 2016	December 31, 2015
	(unaudited)	
<b>ASSETS</b>		
Commercial real estate properties, at cost:		
Land	\$ 201,196	\$ 201,196
Development costs	7,946	7,498
Building and improvements	2,196,864	2,067,636
	2,406,006	2,276,330
Less: accumulated depreciation	(532,406)	(465,584)
Commercial real estate properties, net	1,873,600	1,810,746
Cash and cash equivalents	594,297	46,685
Restricted cash	60,752	65,880
Tenant and other receivables, net of allowance of \$4,242 and \$2,792 in 2016 and 2015, respectively	19,569	18,782
Deferred rent receivables, net of allowance of \$228 and \$245 in 2016 and 2015, respectively	143,578	122,048
Prepaid expenses and other assets	33,685	50,460
Deferred costs, net	287,591	310,679
Acquired below-market ground leases, net	378,018	383,891
Goodwill	491,479	491,479
Total assets	\$ 3,882,569	\$ 3,300,650
<b>LIABILITIES AND EQUITY</b>		
Liabilities:		
Mortgage notes payable, net	\$ 763,457	\$ 747,661
Senior unsecured notes, net	589,546	587,018
Unsecured term loan facility, net	262,830	262,545
Unsecured revolving credit facility, net	—	35,192
Accounts payable and accrued expenses	154,573	111,099
Acquired below-market leases, net	87,708	104,171
Deferred revenue and other liabilities	24,176	31,388
Tenants' security deposits	47,440	48,890
Total liabilities	1,929,730	1,927,964
Commitments and contingencies		
Equity:		
Empire State Realty Trust, Inc. stockholders' equity:		
Preferred stock, \$0.01 par value per share, 50,000,000 shares authorized, none issued or outstanding	—	—
Class A common stock, \$0.01 par value per share, 400,000,000 shares authorized, 153,828,060 shares issued and outstanding and 118,903,312 shares issued and outstanding in 2016 and 2015, respectively	1,538	1,189
Class B common stock, \$0.01 par value per share, 50,000,000 shares authorized, 1,097,584 and 1,120,067 shares issued and outstanding in 2016 and 2015, respectively	11	11
Additional paid-in capital	1,100,706	469,152
Accumulated other comprehensive loss	(14,956)	(883)

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Retained earnings	50,259	55,260
Total Empire State Realty Trust, Inc.'s stockholders' equity	1,137,558	524,729
Non-controlling interests in operating partnership	807,277	839,953
Private perpetual preferred units, \$16.62 per unit liquidation preference, 1,560,360 issued and outstanding in 2016 and 2015	8,004	8,004
Total equity	1,952,839	1,372,686
Total liabilities and equity	\$ 3,882,569	\$ 3,300,650

The accompanying notes are an integral part of these financial statements

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Empire State Realty Trust, Inc.  
Condensed Consolidated Statements of Income  
(unaudited)  
(amounts in thousands, except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Revenues:				
Rental revenue	\$ 115,634	\$ 110,903	\$ 343,155	\$ 333,827
Tenant expense reimbursement	19,176	23,096	56,350	59,878
Observatory revenue	38,093	35,702	91,112	84,525
Construction revenue	—	—	—	1,981
Third-party management and other fees	404	618	1,372	1,658
Other revenue and fees	2,541	5,460	6,748	10,565
Total revenues	175,848	175,779	498,737	492,434
Operating expenses:				
Property operating expenses	38,585	41,052	115,075	120,341
Ground rent expenses	2,331	2,331	6,994	6,994
General and administrative expenses	11,798	10,182	35,623	28,395
Observatory expenses	7,250	7,896	21,900	23,391
Construction expenses	—	—	—	3,222
Real estate taxes	24,691	23,613	71,773	69,543
Acquisition expenses	—	193	98	193
Depreciation and amortization	37,607	45,169	115,382	126,216
Total operating expenses	122,262	130,436	366,845	378,295
Total operating income	53,586	45,343	131,892	114,139
Interest expense	(17,939 )	(16,680 )	(53,310 )	(50,298 )
Income before income taxes	35,647	28,663	78,582	63,841
Income tax expense	(2,750 )	(2,578 )	(4,340 )	(3,283 )
Net income	32,897	26,085	74,242	60,558
Private perpetual preferred unit distributions	(234 )	(234 )	(702 )	(702 )
Net income attributable to non-controlling interests	(16,690 )	(14,631 )	(39,050 )	(34,378 )
Net income attributable to common stockholders	\$ 15,973	\$ 11,220	\$ 34,490	\$ 25,478
Total weighted average shares:				
Basic	136,831	115,900	126,740	112,741
Diluted	280,614	265,873	271,028	265,868
Earnings per share attributable to common stockholders:				
Basic	\$0.12	\$0.10	\$0.27	\$0.23
Diluted	\$0.12	\$0.10	\$0.27	\$0.22
Dividends per share	\$0.105	\$0.085	\$0.295	\$0.255

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.  
 Condensed Consolidated Statements of Comprehensive Income  
 (unaudited)  
 (amounts in thousands)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net income	\$32,897	\$26,085	\$74,242	\$60,558
Other comprehensive income (loss):				
Change in unrealized gain (loss) on valuation of interest rate swap agreements	930	(4,384 )	(29,305 )	(4,384 )
Other comprehensive income (loss)	930	(4,384 )	(29,305 )	(4,384 )
Comprehensive income	33,827	21,701	44,937	56,174
Net income attributable to non-controlling interests and private perpetual preferred unitholders	(16,924 )	(14,865 )	(39,752 )	(35,080 )
Other comprehensive (income) loss attributable to non-controlling interests	(979 )	2,481	15,561	2,481
Comprehensive income attributable to common stockholders	\$15,924	\$9,317	\$20,746	\$23,575

The accompanying notes are an integral part of these financial statements



Empire State Realty Trust, Inc.  
 Condensed Consolidated Statements of Stockholders' Equity  
 For The Nine Months Ended September 30, 2016  
 (unaudited)  
 (amounts in thousands)

	Number of Class A Common Shares	Class A Common Stock	Number of Class B Common Shares	Class B Common Stock	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Retained Earnings	Total Stockholders' Equity	Non-control Interests	Private Perpetual Preferred Units	Total Equity
Balance at December 31, 2015	118,903	\$1,189	1,120	\$11	\$469,152	\$(883)	\$55,260	\$524,729	\$839,953	\$8,004	\$1,372,686
Issuance of Class A shares, net of costs	29,611	296	—	—	610,982	—	—	611,278	—	—	611,278
Conversion of operating partnership units and Class B shares to Class A shares	5,268	53	(22)	—	20,217	(329)	—	19,941	(19,941)	—	—
Equity compensation:											
LTIP units	—	—	—	—	—	—	—	—	6,899	—	6,899
Restricted stock, net of forfeitures	46	—	—	—	355	—	—	355	—	—	355
Dividends and distributions	—	—	—	—	—	—	(39,491)	(39,491)	(43,123)	(702)	(83,316)
Net income	—	—	—	—	—	—	34,490	34,490	39,050	702	74,242
Unrealized loss on valuation of interest rate swap agreements	—	—	—	—	—	(13,744)	—	(13,744)	(15,561)	—	(29,305)
Balance at September 30, 2016	153,828	\$1,538	1,098	\$11	\$1,100,706	\$(14,956)	\$50,259	\$1,137,558	\$807,277	\$8,004	\$1,952,839

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.  
 Condensed Consolidated Statements of Cash Flows  
 (unaudited)  
 (amounts in thousands)

	Nine Months Ended September 30,	
	2016	2015
<b>Cash Flows From Operating Activities</b>		
Net income	\$74,242	\$60,558
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	115,382	126,216
Amortization of deferred financing costs and debt premiums and discount	516	1,626
Amortization of acquired above- and below-market leases, net	(6,285 )	(14,662 )
Amortization of acquired below-market ground leases	5,873	5,873
Straight-lining of rental revenue	(21,495 )	(15,165 )
Equity based compensation	7,254	4,259
Increase (decrease) in cash flows due to changes in operating assets and liabilities:		
Restricted cash	3,120	5,268
Tenant and other receivables	(788 )	(8,661 )
Deferred leasing costs	(18,642 )	(26,533 )
Prepaid expenses and other assets	16,775	14,745
Accounts payable and accrued expenses	(6,671 )	(4,107 )
Deferred revenue and other liabilities	(7,213 )	10,190
Net cash provided by operating activities	162,068	159,607
<b>Cash Flows From Investing Activities</b>		
Decrease (increase) in restricted cash for investing activities	558	(672 )
Development costs	(450 )	(493 )
Additions to building and improvements	(120,401)	(103,835)
Net cash used in investing activities	(120,293)	(105,000)

The accompanying notes are an integral part of these financial statements



Empire State Realty Trust, Inc.  
 Condensed Consolidated Statements of Cash Flows (continued)  
 (unaudited)  
 (amounts in thousands)

	Nine Months Ended September 30,	
	2016	2015
<b>Cash Flows From Financing Activities</b>		
Proceeds from mortgage notes payable	50,000	—
Repayment of mortgage notes payable	(29,220 )	(143,903)
Proceeds from unsecured revolving credit facility	50,000	615,000
Repayments of unsecured revolving credit facility	(90,000 )	(595,000)
Repayments of term loan and credit facility	—	(470,000)
Proceeds from senior unsecured notes	—	350,000
Proceeds from unsecured term loan	—	265,000
Net proceeds from the sale of common stock	611,278	—
Deferred financing costs	(2,905 )	(6,128 )
Private perpetual preferred unit distributions	(702 )	(702 )
Dividends paid to common stockholders	(39,491 )	(29,056 )
Distributions paid to non-controlling interests in the operating partnership	(43,123 )	(39,162 )
Net cash provided by (used in) financing activities	505,837	(53,951 )
Net increase in cash and cash equivalents	547,612	656
Cash and cash equivalents—beginning of period	46,685	45,732
Cash and cash equivalents—end of period	\$594,297	\$46,388
<b>Supplemental disclosures of cash flow information:</b>		
Cash paid for interest	\$53,286	\$49,305
Cash paid for income taxes	\$3,495	\$3,258
<b>Non-cash investing and financing activities:</b>		
Building and improvements included in accounts payable and accrued expenses	\$71,444	\$47,029
Derivative instruments at fair values included in accounts payable and accrued expenses	31,227	4,384
Conversion of operating partnership units and Class B shares to Class A shares	19,941	53,120

The accompanying notes are an integral part of these financial statements

Empire State Realty Trust, Inc.  
Notes to Condensed Consolidated Financial Statements  
(unaudited)

1. Description of Business and Organization

As used in these condensed consolidated financial statements, unless the context otherwise requires, “we,” “us,” “our,” the “company,” and “ESRT” mean Empire State Realty Trust, Inc. and its consolidated subsidiaries.

We are a self-administered and self-managed real estate investment trust, or REIT, that owns, manages, operates, acquires, redevelops and repositions office and retail properties in Manhattan and the greater New York metropolitan area.

As of September 30, 2016, our total portfolio contained 10.1 million rentable square feet of office and retail space. We owned 14 office properties (including three long-term ground leasehold interests) encompassing approximately 9.4 million rentable square feet of office space. Nine of these properties are located in the midtown Manhattan market and aggregate approximately 7.6 million rentable square feet of office space, including the Empire State Building. Our Manhattan office properties also contain an aggregate of 502,429 rentable square feet of retail space on their ground floor and/or contiguous levels. Our remaining five office properties are located in Fairfield County, Connecticut and Westchester County, New York, encompassing in the aggregate approximately 1.9 million rentable square feet. The majority of square footage for these five properties is located in densely populated metropolitan communities with immediate access to mass transportation. Additionally, we have entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of our office properties, that will support the development of an approximately 380,000 rentable square foot office building and garage, which we refer to herein as Metro Tower. As of September 30, 2016, our portfolio included four standalone retail properties located in Manhattan and two standalone retail properties located in the city center of Westport, Connecticut, encompassing 204,452 rentable square feet in the aggregate.

We were organized as a Maryland corporation on July 29, 2011 and commenced operations upon completion of our initial public offering and related formation transactions on October 7, 2013. Our operating partnership, Empire State Realty OP, L.P., holds substantially all of our assets and conducts substantially all of our business. As of September 30, 2016, we owned approximately 51.8% of the aggregate operating partnership units in our operating partnership. Our company, as the sole general partner in our operating partnership, has responsibility and discretion in the management and control in our operating partnership, and the limited partners in our operating partnership, in such capacity, have no authority to transact business for, or participate in the management activities of, our operating partnership. Accordingly, our operating partnership has been consolidated by us. We elected to be taxed as a REIT and operate in a manner that we believe allows us to qualify as a REIT for federal income tax purposes commencing with our taxable year ended December 31, 2013.

2. Summary of Significant Accounting Policies

There have been no material changes to the summary of significant accounting policies included in the section entitled “Summary of Significant Accounting Policies” in our December 31, 2015 Annual Report on Form 10-K.

Basis of Quarterly Presentation and Principles of Consolidation

The accompanying unaudited condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”), for interim financial information, and with the rules and regulations of the Securities and Exchange Commission (the “SEC”). Accordingly, certain information and footnote disclosures required by GAAP for complete financial statements have been condensed or omitted in accordance with such rules and regulations. In the opinion of management, all adjustments and eliminations (including intercompany balances and transactions), consisting of normal recurring adjustments, considered necessary for the fair presentation of the financial statements have been included.

For purposes of comparison, certain items shown in the 2015 unaudited condensed consolidated financial statements have been reclassified to conform to the presentation used for 2016. For 2015 periods presented, certain Empire State Building public relations costs previously included in property operating expenses are included in observatory expenses. For the three and nine months ended September 30, 2016, these costs were \$0.5 million and \$1.8 million, respectively, and for the three and nine months ended September 30, 2015, these costs were \$0.6 million and \$1.7 million, respectively.

The results of operations for the periods presented are not necessarily indicative of the results that may be expected for the corresponding full years. These financial statements should be read in conjunction with the financial statements and accompanying notes included in the financial statements for the year ended December 31, 2015 contained in our Annual Report on Form 10-K. We do not consider our business to be subject to material seasonal fluctuations, except that our observatory business is subject to tourism seasonality. During the past ten years, approximately 16.0% to 18.0% of our annual observatory revenue was realized in the first quarter, 26.0% to 28.0% was realized in the second quarter, 31.0% to 33.0% was realized in the third quarter and 23.0% to 25.0% was realized in the fourth quarter. We consolidate entities in which we have a controlling financial interest. In determining whether we have a controlling financial interest in a partially owned entity and the requirement to consolidate the accounts of that entity, we consider factors such as ownership interest, board representation, management representation, authority to make decisions, and contractual and substantive participating rights of the partners/members as well as whether the entity is a variable interest entity ("VIE") and we are the primary beneficiary. The primary beneficiary of a VIE is the entity that has (i) the power to direct the activities that most significantly impact the entity's economic performance and (ii) the obligation to absorb losses of the VIE or the right to receive benefits from the VIE that could be significant to the VIE. The primary beneficiary is required to consolidate the VIE.

On January 1, 2016, we adopted accounting guidance under the Financial Accounting Standards Board ("FASB") Accounting Standards Codification Topic 810, Consolidation, modifying the analysis we must perform to determine whether we should consolidate certain types of legal entities. The guidance does not amend the existing disclosure requirements for variable interest entities or voting interest model entities. The guidance, however, modified the requirements to qualify under the voting interest model. Under the revised guidance, our operating partnership, Empire State Realty OP, L.P., is a variable interest entity of our company, Empire State Realty Trust, Inc. As the operating partnership is already consolidated in the balance sheets of Empire State Realty Trust, Inc., the identification of this entity as a variable interest entity had no impact on our consolidated financial statements. There were no other legal entities qualifying under the scope of the revised guidance that were consolidated as a result of the adoption. We will assess the accounting treatment for each investment we may have in the future. This assessment will include a review of each entity's organizational agreement to determine which party has what rights and whether those rights are protective or participating. For all VIEs, we will review such agreements in order to determine which party has the power to direct the activities that most significantly impact the entity's economic performance and benefit. In situations where we or our partner could approve, among other things, the annual budget, or leases that cover more than a nominal amount of space relative to the total rentable space at each property, we would not consolidate the investment as we consider these to be substantive participation rights that result in shared power of the activities that would most significantly impact the performance and benefit of such joint venture investment.

A non-controlling interest in a consolidated subsidiary is defined as the portion of the equity (net assets) in a subsidiary not attributable, directly or indirectly, to a parent. Non-controlling interests are required to be presented as a separate component of equity in the condensed consolidated balance sheets and in the condensed consolidated statements of income by requiring earnings and other comprehensive income to be attributed to controlling and non-controlling interests.

#### Accounting Estimates

The preparation of the condensed consolidated financial statements in accordance with GAAP requires management to use estimates and assumptions that in certain circumstances affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Significant items subject to such estimates and assumptions include allocation of the purchase price of acquired real estate properties among tangible and intangible assets, determination of the useful life of real estate properties and other long-lived assets, valuation and impairment analysis of commercial real estate properties and other long-lived assets, estimate of tenant expense reimbursement, estimate of percentage of completion on construction contracts, valuation of the allowance for doubtful accounts, and valuation of derivative instruments, senior unsecured notes, mortgage notes payable, unsecured term loan and revolving credit facilities, and equity based compensation. These estimates are prepared using management's best judgment, after considering past, current, and expected events and economic conditions. Actual results could differ from those estimates.





#### Recently Issued or Adopted Accounting Standards

During August 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments, which addresses eight specific cash flow issues with the objective of reducing the existing diversity in practice in how certain cash receipts and cash payments are presented and classified in the statement of cash flows. ASU No. 2016-15 will be effective for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. Earlier adoption is permitted including adoption in an interim period. We are evaluating the impact of adopting this new accounting standard on our consolidated financial statements.

During June 2016, the FASB issued ASU No. 2016-13, Financial Instruments-Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments, which contains amendments that replace the incurred loss impairment methodology in current GAAP with a methodology that reflects expected credit losses and requires consideration of a broader range of reasonable and supportable information to inform credit loss estimates. ASU No. 2016-13 will be effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Earlier adoption as of the fiscal years beginning after December 15, 2018, including interim periods within those fiscal years, is permitted. The amendments must be adopted through a cumulative-effect adjustment to retained earnings as of the beginning of the first reporting period in which the guidance is effective (that is, a modified retrospective approach). We are evaluating the impact of adopting this new accounting standard on our consolidated financial statements.

During February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which requires that a lessee recognize in the statement of financial position a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. ASU No. 2016-02 leaves the accounting for leases by lessors largely unchanged from previous GAAP. ASU No. 2016-02 will be effective for fiscal years beginning after December 15, 2018 and subsequent interim periods. The new standard must be adopted using a modified retrospective transition, and provides for certain practical expedients. Transition will require application of the new guidance at the beginning of the earliest comparative period presented. We are evaluating the impact of adopting this new accounting standard on our consolidated financial statements.

During January 2016, the FASB issued ASU No. 2016-01, Financial Instruments - Overall (Subtopic 825-10) - Recognition and Measurement of Financial Assets and Liabilities, which makes targeted improvements to existing generally accepted accounting principles by requiring, among others, i) equity investments (except those accounted for under the equity method of accounting, or those that result in consolidation of the investee) to be measured at fair value with changes in fair value recognized in net income, and ii) public business entities to use the exit price notion when measuring the fair value of financial instruments for disclosure purposes, iii) separate presentation of financial assets and financial liabilities by measurement category and form of financial asset (that is, securities or loans and receivables) on the balance sheet or the accompanying notes to the financial statements. ASU No. 2016-01 will take effect for public companies for fiscal years beginning after December 15, 2017, including interim periods within those fiscal years. We are evaluating the impact of adopting this new accounting standard on our consolidated financial statements.

During April 2015, the FASB issued ASU No. 2015-03, Interest - Imputation of Interest (Subtopic 835-30): Simplifying the Presentation of Debt Issuance Costs, which amends the requirements for the presentation of debt issuance costs and requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. ASU No. 2015-03 is effective for fiscal years, beginning after December 15, 2015 and interim periods within those fiscal years. ASU No. 2015-03 was amended in August 2015 by ASU No. 2015-15, Interest - Imputation of Interest (Subtopic 835-30) - Presentation and Subsequent Measurement of Debt Issuance Costs Associated with Line-of-Credit Arrangements, to add to the Codification SEC staff guidance that the SEC staff will not object to an entity presenting the costs of securing line-of-credit arrangements as an asset, regardless of whether there are any outstanding borrowings. The SEC Observer to the Emerging Issues Task Force announced the staff guidance in response to

questions that arose after the FASB issued ASU No. 2015-03. We adopted ASU 2015-03 as of December 31, 2015. During February 2015, the FASB issued ASU No. 2015-02, Consolidation (Topic 810) - Amendments to the Consolidation Analysis, which amends the criteria for determining which entities are considered VIEs, amends the criteria for determining if a service provider possesses a variable interest in a VIE and ends the deferral granted to investment companies for application of the VIE consolidation model. ASU No. 2015-02 is effective for fiscal years, beginning after December 15, 2015 and interim periods within those fiscal years. The implementation of this update did not cause any material changes to our consolidated financial statements.

During May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers, which will replace all current GAAP guidance related to revenue recognition and eliminate all industry-specific guidance. The new revenue recognition standard provides a unified model to determine when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. This guidance will be effective beginning in 2017 and can be applied either retrospectively to each period presented or as a cumulative-effect adjustment as of the date of adoption. ASU No. 2014-09 was amended in August 2015 by ASU No. 2015-14 Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date, which defers the effective date of ASU No. 2014-09 for all entities by one year. Public business entities, certain not-for-profit entities, and certain employee benefit plans should apply the guidance in ASU No. 2014-09 to annual reporting periods beginning after December 15, 2017, including interim reporting periods within that reporting period. Earlier application is permitted only as of annual reporting periods beginning after December 15, 2016, including interim reporting periods within that reporting period. We are evaluating the impact of adopting this new accounting standard on our consolidated financial statements.

### 3. Deferred Costs, Acquired Lease Intangibles and Goodwill

Deferred costs, net consisted of the following as of September 30, 2016 and December 31, 2015 (amounts in thousands):

	September 30, December 31,	
	2016	2015
Leasing costs	\$ 137,925	\$ 121,864
Acquired in-place lease value and deferred leasing costs	258,880	285,902
Acquired above-market leases	76,532	81,680
	473,337	489,446
Less: accumulated amortization	(190,773 )	(178,767 )
Total deferred costs, net, excluding net deferred financing costs	\$ 282,564	\$ 310,679

At September 30, 2016, \$5.0 million of net deferred financing costs associated with the unsecured revolving credit facility was included in deferred costs, net on the condensed consolidated balance sheet.

Amortization expense related to deferred leasing costs and acquired deferred leasing costs was \$6.1 million and \$7.8 million for the three months ended September 30, 2016 and 2015, respectively, and \$17.6 million and \$19.2 million for the nine months ended September 30, 2016 and 2015, respectively. Amortization expense related to acquired lease intangibles was \$5.0 million and \$9.8 million for the three months ended September 30, 2016 and 2015, respectively, and \$19.7 million and \$29.4 million for the nine months ended September 30, 2016 and 2015, respectively.

Amortizing acquired intangible assets and liabilities consisted of the following as of September 30, 2016 and December 31, 2015 (amounts in thousands):

	September 30, December 31,	
	2016	2015
Acquired below-market ground leases	\$ 396,916	\$ 396,916
Less: accumulated amortization	(18,898 )	(13,025 )
Acquired below-market ground leases, net	\$ 378,018	\$ 383,891

	September 30, December 31,	
	2016	2015
Acquired below-market leases	\$ (135,633 )	\$ (163,290 )
Less: accumulated amortization	47,925	59,119
Acquired below-market leases, net	\$ (87,708 )	\$ (104,171 )

Rental revenue related to the amortization of below-market leases, net of above-market leases, was \$1.2 million and \$4.8 million for the three months ended September 30, 2016 and 2015, respectively, and \$6.3 million and \$14.7 million for the nine months ended September 30, 2016 and 2015, respectively.



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As of September 30, 2016, we had goodwill of \$491.5 million. Goodwill was allocated \$227.5 million to the observatory reportable segment and \$264.0 million to the real estate segment.

4. Debt

Debt consisted of the following as of September 30, 2016 and December 31, 2015 (amounts in thousands):

	Principal Balance as of September 30, 2016	Principal Balance as of December 31, 2015	Stated Rate	Effective Rate <sup>(1)</sup>	Maturity Date <sup>(2)</sup>
As of September 30, 2016					
Mortgage debt collateralized by:					
Fixed rate mortgage debt					
10 Bank Street	\$ 31,715	\$ 32,214	5.72%	6.22%	6/1/2017
1542 Third Avenue	17,906	18,222	5.90%	6.61%	6/1/2017
First Stamford Place	236,030	238,765	5.65%	6.17%	7/5/2017
1010 Third Avenue and 77 West 55th Street	26,646	27,064	5.69%	6.39%	7/5/2017
383 Main Avenue	28,811	29,269	5.59%	6.04%	7/5/2017
1333 Broadway	67,909	68,646	6.32%	3.76%	1/5/2018
1400 Broadway					
(first lien mortgage loan)	67,974	68,732	6.12%	3.41%	2/5/2018
(second lien mortgage loan)	9,442	9,600	3.35%	3.36%	2/5/2018
112 West 34th Street					
(first lien mortgage loan)	75,554	76,406	6.01%	3.36%	4/5/2018
(second lien mortgage loan)	9,543	9,640	6.56%	3.67%	4/5/2018
1350 Broadway	37,913	38,348	5.87%	3.74%	4/5/2018
Metro Center	96,483	97,950	3.59%	3.66%	11/5/2024
10 Union Square <sup>(3)</sup>	50,000	20,289	3.70%	4.00%	4/1/2026
Total mortgage debt	755,926	735,145			
Senior unsecured notes - exchangeable	250,000	250,000	2.63%	3.93%	8/15/2019
Senior unsecured notes:					
Series A	100,000	100,000	3.93%	4.02%	3/27/2025
Series B	125,000	125,000	4.09%	4.18%	3/27/2027
Series C	125,000	125,000	4.18%	4.27%	3/27/2030
Unsecured revolving credit facility	—	40,000	(4)	(4)	1/23/2019
Unsecured term loan facility	265,000	265,000	(5)	(5)	8/24/2022
Total principal	1,620,926	1,640,145			
Unamortized premiums, net of unamortized discount	1,974	5,181			
Deferred financing costs, net	(7,067)	(12,910)			
Total	\$ 1,615,833	\$ 1,632,416			

(1) The effective rate is the yield as of September 30, 2016, including the effects of debt issuance costs and the amortization of the fair value of debt adjustment.

(2) Pre-payment is generally allowed for each loan upon payment of a customary pre-payment penalty.

(3) The mortgage loan collateralized by 10 Union Square was refinanced in March 2016.

(4) At September 30, 2016, the unsecured revolving credit facility bears a floating rate at 30 day LIBOR plus 1.15%.  
 (5) The rate at September 30, 2016 was 1.68%.

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The unsecured term loan facility bears a floating rate at 30 day LIBOR plus 1.60%. The rate at September 30, 2016 (5) was 2.13%. Pursuant to a forward interest rate swap agreement, the LIBOR rate is fixed at 2.1485% for the period beginning on August 31, 2017 through maturity.

## Principal Payments

Aggregate required principal payments at September 30, 2016 are as follows (amounts in thousands):

Year	Amortization	Maturities	Total
2016	\$ 3,086	\$—	\$3,086
2017	9,904	336,009	345,913
2018	2,880	262,210	265,090
2019	2,188	250,000	252,188
2020	2,268	—	2,268
Thereafter	9,706	742,675	752,381
Total	\$ 30,032	\$ 1,590,894	\$ 1,620,926

## Deferred Financing Costs

Deferred financing costs, net, consisted of the following at September 30, 2016 and December 31, 2015 (amounts in thousands):

	September 30, December	
	2016	31, 2015
Financing costs	\$ 23,044	\$ 20,882
Less: accumulated amortization	(10,949 )	(7,972 )
Total deferred financing costs, net	\$ 12,095	\$ 12,910

Amortization expense related to deferred financing costs was \$1.3 million and \$1.1 million for the three months ended September 30, 2016 and 2015, respectively, and \$3.7 million and \$5.0 million for the nine months ended September 30, 2016 and 2015, respectively, and was included in interest expense. At September 30, 2016, \$5.0 million of net deferred financing costs associated with the unsecured revolving credit facility was included in deferred costs, net on the condensed consolidated balance sheet.

## Unsecured Revolving Credit Facility

On January 23, 2015, we entered into an unsecured revolving credit agreement, which is referred to herein as the “unsecured revolving credit facility,” with Bank of America, Merrill Lynch, Goldman Sachs and the other lenders party thereto. Merrill Lynch acted as joint lead arranger; Bank of America acted as administrative agent; and Goldman Sachs acted as syndication agent and joint lead arranger.

Concurrently with entering into the unsecured revolving credit facility, on January 23, 2015, we terminated our secured revolving and term credit facility and wrote off \$1.3 million of deferred financing costs. In connection with the termination of the secured revolving and term credit facility, all of the guarantors thereunder were released from their guaranty obligations, all liens created thereby were terminated, and all collateral pledged thereunder was released.

The unsecured revolving credit facility is comprised of a revolving credit facility in the maximum original principal amount of \$800.0 million. The unsecured revolving credit facility contains an accordion feature that would allow us to increase the maximum aggregate principal amount to \$1.25 billion under specified circumstances. On July 6, 2016, we partially exercised the accordion feature and increased our committed borrowing capacity under the unsecured revolving credit facility from \$800 million to \$1.1 billion.

Amounts outstanding under the unsecured revolving credit facility bear interest at a floating rate equal to, at our election, (x) a Eurodollar rate, plus a spread that ranges from 0.875% to 1.600% depending upon our leverage ratio and credit rating; or (y) a base rate, plus a spread that ranges from 0.000% to 0.600% depending upon our leverage ratio and credit rating. In addition, the unsecured revolving credit facility permits us to borrow at competitive bid rates determined in accordance with procedures described in the unsecured revolving credit facility agreement. We paid

certain customary fees and expense reimbursements to enter into the unsecured revolving credit facility.



The initial maturity of the unsecured revolving credit facility is January 2019. We have the option to extend the initial term for up to two additional 6-month periods, subject to certain conditions, including the payment of an extension fee equal to 0.075% of the then outstanding commitments under the unsecured revolving credit facility.

The unsecured revolving credit facility includes the following financial covenants: (i) maximum leverage ratio of total indebtedness to total asset value of the loan parties and their consolidated subsidiaries will not exceed 60%, (ii) consolidated secured indebtedness will not exceed 40% of total asset value, (iii) tangible net worth will not be less than \$745.4 million plus 75% of net equity proceeds received by us (other than proceeds received within ninety (90) days after the redemption, retirement or repurchase of ownership or equity interests in us up to the amount paid by us in connection with such redemption, retirement or repurchase, where, the net effect is that we shall not have increased our net worth as a result of any such proceeds), (iv) adjusted EBITDA (as defined in the unsecured revolving credit facility) to consolidated fixed charges will not be less than 1.50x, (v) the aggregate net operating income with respect to all unencumbered eligible properties to the portion of interest expense attributable to unsecured indebtedness will not be less than 1.75x, (vi) the ratio of total unsecured indebtedness to unencumbered asset value will not exceed 60%, and (vii) consolidated secured recourse indebtedness will not exceed 10% of total asset value (provided, however, this covenant shall not apply at any time after we achieve debt ratings from at least two of Moody's, S&P and Fitch, and such debt ratings are Baa3 or better (in the case of a rating by Moody's) or BBB- or better (in the case of a rating by S&P or Fitch)).

The unsecured revolving credit facility contains customary covenants, including limitations on liens, investment, debt, fundamental changes, and transactions with affiliates, and requires certain customary financial reports. The unsecured revolving credit facility contains customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross-defaults, bankruptcy or other insolvency events, judgments, ERISA events, invalidity of loan documents, loss of real estate investment trust qualification, and occurrence of a change of control (as defined in the agreement for the unsecured credit facility).

As of September 30, 2016, we were in compliance with the covenants under the unsecured revolving credit facility.

#### Senior Unsecured Notes

#### Exchangeable Senior Notes

During August 2014, we issued \$250.0 million principal amount of 2.625% Exchangeable Senior Notes ("2.625% Exchangeable Senior Notes") due August 15, 2019. These 2.625% Exchangeable Senior Notes will be exchangeable into cash, shares of Class A common stock or a combination of cash and shares of Class A common stock, at our election. We have asserted that our intent and ability to settle the principal amount of the 2.625% Exchangeable Senior Notes is in cash. As of September 30, 2016, the exchange rate of the 2.625% Exchangeable Senior Notes was 51.5095 shares per \$1,000 principal amount of notes (equivalent to an initial exchange price of approximately \$19.41 per share of Class A common stock), subject to adjustment, as described in the related indenture governing the 2.625% Exchangeable Senior Notes.

For the three and nine months ended September 30, 2016, total interest expense related to the 2.625% Exchangeable Senior Notes was \$2.4 million and \$7.3 million, respectively, consisting of (i) the contractual interest expense of \$1.6 million and \$4.9 million, respectively, (ii) the additional non-cash interest expense of \$0.7 million and \$2.0 million, respectively, relating to the accretion of the debt discount, and (iii) the amortization of deferred financing costs of \$0.1 million and \$0.4 million, respectively. For the three and nine months ended September 30, 2015, total interest expense related to the 2.625% Exchangeable Senior Notes was \$2.4 million and \$7.3 million, respectively, consisting of (i) the contractual interest expense of \$1.6 million and \$4.9 million, respectively, (ii) the additional non-cash interest expense

of \$0.7 million and \$2.0 million, respectively, relating to the accretion of the debt discount, and (iii) the amortization of deferred financing costs of \$0.1 million and \$0.4 million, respectively.

Series A, Series B, and Series C Senior Notes

During March 2015, we issued and sold an aggregate principal amount of \$350 million senior unsecured notes consisting of \$100 million of 3.93% Series A Senior Notes due 2025, \$125 million of 4.09% Series B Senior Notes due 2027, and \$125 million of 4.18% Series C Senior Notes due 2030 (together, the “Series A, B and C Senior Notes”). Interest on the Series A, B and C Senior Notes is payable quarterly.

The terms of the Series A, B and C Senior Notes agreement include customary covenants, including limitations on liens, investment, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. The Series A, B and C Senior Notes also require compliance with financial ratios consistent with our unsecured revolving

credit facility including a maximum leverage ratio, a maximum secured leverage ratio, a minimum amount of tangible net worth, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, a maximum unsecured leverage ratio and a maximum amount of secured recourse indebtedness.

The proceeds from the issuance of the Series A, B and C Senior Notes were used to repay outstanding mortgage debt, reduce amounts outstanding under the unsecured revolving credit facility and for other general corporate purposes. As of September 30, 2016, we were in compliance with the covenants under the Series A, B and C Senior Notes.

#### Senior Unsecured Term Loan Facility

During August 2015, we entered into a \$265.0 million senior unsecured term loan facility, which is referred to herein as the “term loan facility” with Wells Fargo Bank, National Association, as administrative agent, Capital One, National Association, as syndication agent, PNC Bank, National Association, as documentation agent, and the lenders from time to time party thereto.

Amounts outstanding under the term loan facility bear interest at a floating rate equal to, at our election, (x) a LIBOR rate, plus a spread that ranges from 1.400% to 2.350% depending upon our leverage ratio and credit rating; or (y) a base rate, plus a spread that ranges from 0.400% to 1.350% depending upon our leverage ratio and credit rating. Pursuant to a forward interest rate swap agreement, we effectively fixed LIBOR at 2.1485% for \$265.0 million of the term loan facility for the period beginning on August 31, 2017 through maturity. In connection with the closing of the term loan facility, we paid certain customary fees and expense reimbursements.

The term loan facility matures on August 24, 2022. We may prepay loans under the term loan facility at any time, subject to certain notice requirements. To the extent that we prepay all or any portion of a loan on or prior to August 24, 2017, we will pay a prepayment premium equal to (i) if such prepayment occurs on or prior to August 24, 2016, 2.00% of the principal amount so prepaid, and (ii) if such prepayment occurs after August 24, 2016 but on or prior to August 24, 2017, 1.00% of the principal amount so prepaid.

The terms of the term loan facility agreement include customary covenants, including limitations on liens, investment, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. The term loan facility requires compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum amount of tangible net worth, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, a maximum unsecured leverage ratio and a maximum amount of secured recourse indebtedness. It also contains customary events of default (subject in certain cases to specified cure periods). These terms in the term loan facility agreement are consistent with the terms in our unsecured revolving credit facility agreement.

The proceeds from the term loan facility were used to repay borrowings made under the unsecured revolving credit facility. As of September 30, 2016, we were in compliance with the covenants under the term loan facility.

#### 5. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consist of the following as of September 30, 2016 and December 31, 2015 (amounts in thousands):

	September 30, December 31,	
	2016	2015
Accounts payable and accrued expenses	\$ 99,522	\$ 83,352
Payable to the estate of Leona M. Helmsley <sup>(1)</sup>	18,367	18,367
Interest rate swap agreements liability	31,227	1,922
Accrued interest payable	4,426	5,555
Due to affiliated companies	1,031	1,903

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Accounts payable and accrued expenses           \$ 154,573       \$ 111,099

<sup>(1)</sup> Reflects a payable to the estate of Leona M. Helmsley in the amount of New York City transfer taxes which would have been payable in absence of the estate's exemption from such tax.

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## 6. Financial Instruments and Fair Values

### Derivative Financial Instruments

We use derivative financial instruments primarily to manage interest rate risk and such derivatives are not considered speculative. These derivative instruments are typically in the form of interest rate swap and forward agreements and the primary objective is to minimize interest rate risks associated with investing and financing activities. The counterparties of these arrangements are major financial institutions with which we may also have other financial relationships. We are exposed to credit risk in the event of non-performance by these counterparties; however, we currently do not anticipate that any of the counterparties will fail to meet their obligations.

We have agreements with our derivative counterparties that contain a provision where if we either default or are capable of being declared in default on any of our indebtedness, then we could also be declared in default on our derivative obligations. As of September 30, 2016, the fair value of derivatives in a net liability position, which includes accrued interest but excludes any adjustment for nonperformance risk, related to these agreements was \$31.8 million. If we had breached any of these provisions at September 30, 2016, we could have been required to settle our obligations under the agreements at their termination value of \$31.8 million.

As of September 30, 2016, we had three interest rate LIBOR swaps with an aggregate notional value of \$465.0 million. The notional value does not represent exposure to credit, interest rate or market risks. The fair value of these derivative instruments, which is included in accounts payable and accrued expenses on the condensed consolidated balance sheet, amounted to \$31.2 million at September 30, 2016. These interest rate swaps have been designated as cash flow hedges and hedge the future cash outflows on our mortgage debt and also on our term loan facility that is subject to a floating interest rate. As of September 30, 2016, these cash flow hedges are deemed effective and an unrealized gain of \$0.9 million and an unrealized loss of \$29.3 million are reflected in the condensed consolidated statements of comprehensive income for the three and nine months ended September 30, 2016, respectively. Amounts reported in accumulated other comprehensive income related to derivatives will be reclassified to interest expense as interest payments are made on the debt. We estimate that \$1.2 million of the current balance held in accumulated other comprehensive income (loss) will be reclassified into interest expense within the next 12 months relating to the interest rate swap contracts in effect as of September 30, 2016.

The table below summarizes the terms of agreements and the fair values of our derivative financial instruments as of September 30, 2016 and December 31, 2015 (dollar amounts in thousands):

Derivative	As of September 30, 2016				September 30, December 2016		31, 2015		
	Notional Amount	Receive Rate	Pay Rate	Effective Date	Expiration Date	Assetability	Liability	Assetability	Liability
Interest rate swap	\$265,000	1 Month LIBOR	2.1485%	August 31, 2017	August 24, 2022	\$ \$(12,921 )	\$ \$(1,620 )		
Interest rate swap	100,000	3 Month LIBOR	2.5050%	July 5, 2017	July 5, 2027	—(9,153 )	—(148 )		
Interest rate swap	100,000	3 Month LIBOR	2.5050%	July 5, 2017	July 5, 2027	—(9,153 )	—(154 )		
						\$ \$(31,227 )	\$ \$(1,922 )		

The table below shows the effect of our derivative financial instruments designated as cash flow hedges for the three and nine months ended September 30, 2016 and 2015 (amounts in thousands):

Effects of Cash Flow Hedges	Three Months Ended September 30, 2016	Three Months Ended September 30, 2015	Nine Months Ended September 30, 2016	Nine Months Ended September 30, 2015
	Amount of gain (loss) recognized in other comprehensive income (loss) - effective portion	\$ 930	\$ (4,384 )	\$ (29,305 )
Amount of gain (loss) reclassified from accumulated other comprehensive income (loss) into interest expense - effective portion	—	—	—	—

Amount of gain (loss) recognized in other income/expense -                    —                    —                    —                    —  
ineffective portion

**Fair Valuation**

The estimated fair values at September 30, 2016 and December 31, 2015 were determined by management, using available market information and appropriate valuation methodologies. Considerable judgment is necessary to interpret market

data and develop estimated fair value. Accordingly, the estimates presented herein are not necessarily indicative of the amounts we could realize on disposition of the financial instruments. The use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts.

The fair value of our senior unsecured notes - Exchangeable is classified as Level 1 and was derived from quoted prices in active markets. However, the fair value could be classified as Level 2 if trading volumes are low.

The fair value of derivative instruments, which is classified as Level 2, and measured on a recurring basis, is determined using widely accepted valuation techniques, including discounted cash flow analysis on the expected cash flows of each derivative. This analysis reflects the contractual terms of the derivatives, including the period to maturity, and uses observable market-based inputs, including interest rate curves and implied volatilities. The fair values of interest rate swaps are determined using the market standard methodology of netting the discounted future fixed cash receipts (or payments) and the discounted expected variable cash payments (or receipts). The variable cash payments (or receipts) are based on an expectation of future interest rates (forward curves) derived from observable market interest rate curves.

The fair value of borrowings, which is classified as Level 3, is estimated by discounting the contractual cash flows of each debt to their present value using adjusted market interest rates, which is provided by a third-party specialist.

The following tables summarize the carrying and estimated fair values of our financial instruments as of September 30, 2016 and December 31, 2015 (amounts in thousands):

	September 30, 2016				
	Estimated Fair Value				
	Carrying Value	Total	Level 1	Level 2	Level 3
Interest rate swaps included in accounts payable and accrued expenses	\$31,227	\$31,227	\$ —	-\$31,227	\$ —
Mortgage notes payable	763,457	770,827	—	—	770,827
Senior unsecured notes - Exchangeable	240,658	290,325	290,325	—	—
Senior unsecured notes - Series A, B, and C	348,888	364,574	—	—	364,574
Unsecured term loan facility	262,830	265,000	—	—	265,000
Unsecured revolving credit facility	—	—	—	—	—
	December 31, 2015				
	Estimated Fair Value				
	Carrying Value	Total	Level 1	Level 2	Level 3
Interest rate swaps included in accounts payable and accrued expenses	\$1,922	\$1,922	\$ —	-\$1,922	\$ —
Mortgage notes payable	747,661	752,350	—	—	752,350
Senior unsecured notes - Exchangeable	238,208	251,391	—	—	251,391
Senior unsecured notes - Series A, B, and C	348,810	344,501	—	—	344,501
Unsecured term loan facility	262,545	265,000	—	—	265,000
Unsecured revolving credit facility	35,192	40,000	—	—	40,000

Disclosure about fair value of financial instruments is based on pertinent information available to us as of September 30, 2016 and December 31, 2015. Although we are not aware of any factors that would significantly affect the reasonableness of these fair value amounts, such amounts have not been comprehensively revalued for purposes of these financial statements since that date and current estimates of fair value may differ significantly from the amounts presented herein.

7. Rental Income

We lease various office spaces to tenants over terms ranging from one to 16 years. Certain leases have renewal options for additional terms. The leases provide for base monthly rentals and reimbursements for real estate taxes, escalations linked to

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the consumer price index or common area maintenance known as operating expense escalation. Operating expense reimbursements are reflected in our condensed consolidated statements of income as tenant expense reimbursement.

## 8. Commitments and Contingencies

### Legal Proceedings

Except as described below, as of September 30, 2016, we were not involved in any material litigation, nor, to our knowledge, was any material litigation threatened against us or our properties, other than routine litigation arising in the ordinary course of business such as disputes with tenants. We believe that the costs and related liabilities, if any, which may result from such actions will not materially affect our condensed consolidated financial position, operating results or liquidity.

In March 2012, five putative class actions, or the "Original Class Actions," were filed in New York State Supreme Court, New York County by investors in certain of the existing entities (constituting the predecessor and the non-controlled entities) (the "Existing Entities") on March 1, 2012, March 7, 2012, March 12, 2012, March 14, 2012 and March 19, 2012. The plaintiffs asserted claims against our predecessor's management companies, Anthony E. Malkin, Peter L. Malkin, the estate of Leona M. Helmsley, our operating partnership and us for breach of fiduciary duty, unjust enrichment and/or aiding and abetting breach of fiduciary duty. They alleged, among other things, that the terms of the consolidation and the process by which it was structured (including the valuation that was employed) are unfair to the investors in the Existing Entities, the consolidation provides excessive benefits to Malkin Holdings LLC (now our subsidiary) and its affiliates and the then-draft prospectus/consent solicitation with respect to the consolidation filed with the SEC failed to make adequate disclosure to permit a fully-informed decision about the consolidation. The complaints sought money damages and injunctive relief preventing the consolidation. The Original Class Actions were consolidated and co-lead plaintiffs' counsel were appointed by the New York State Supreme Court by order dated June 26, 2012. Further, an underlying premise of the Original Class Actions, as noted in discussions among plaintiffs' counsel and defendants' counsel, was that the consolidation had been structured in such a manner that would cause investors in Empire State Building Associates L.L.C., 60 East 42nd St. Associates L.L.C. and 250 West 57th St. Associates L.L.C. (the "subject LLCs") immediately to incur substantial tax liabilities.

The parties entered into a Stipulation of Settlement dated September 28, 2012, resolving the Original Class Actions. The Stipulation of Settlement recites that the consolidation was approved by overwhelming consent of the investors in the Existing Entities. The Stipulation of Settlement states that counsel for the plaintiff class satisfied themselves that they have received adequate access to relevant information, including the independent valuer's valuation process and methodology, that the disclosures in the Registration Statement on Form S-4, as amended, are appropriate, that the consolidation presents potential benefits, including the opportunity for liquidity and capital appreciation, that merit the investors' serious consideration and that each of the named class representatives intends to support the consolidation as modified. The Stipulation of Settlement further states that counsel for the plaintiff class are satisfied that the claims regarding tax implications, enhanced disclosures, appraisals and exchange values of the properties that would be consolidated into our company, and the interests of the investors in the Existing Entities, have been addressed adequately, and they have concluded that the settlement pursuant to the Stipulation of Settlement and opportunity to consider the proposed consolidation on the basis of revised consent solicitations are fair, reasonable, adequate and in the best interests of the plaintiff class.

The defendants in the Stipulation of Settlement denied that they committed any violation of law or breached any of their duties and did not admit that they had any liability to the plaintiffs.

The terms of the settlement include, among other things (i) a payment of \$55.0 million, with a minimum of 80% in cash and maximum of 20% in freely-tradable shares of common stock and/or freely-tradable operating partnership units to be distributed, after reimbursement of plaintiffs' counsel's court-approved expenses and payment of plaintiffs' counsel's court-approved attorneys' fees (which are included within the \$55.0 million settlement payment) and, in the case of shares of common stock and/or operating partnership units, after the termination of specified lock-up periods, to investors in the Existing Entities pursuant to a plan of allocation to be prepared by counsel for plaintiffs; (ii) defendants' agreement that (a) the Offering would be on the basis of a firm commitment underwriting; (b) if, during the solicitation period, any of the three subject LLCs' percentage of total exchange value is lower than what was stated in the final prospectus/consent solicitation with respect to the consolidation by 10% or more, such decrease would be

promptly disclosed by defendants to investors in the subject LLCs; and (c) unless total gross proceeds of \$600.0 million are raised in the Offering, defendants will not proceed with the consolidation without further approval of the subject LLCs; and (iii) defendants' agreement to make additional disclosures in the prospectus/consent solicitation with respect to the consolidation regarding certain matters (which are included therein). Investors in the Existing Entities will not be required to bear any portion of the settlement payment. The payment in settlement of the Original Class Actions will be made by the estate of Leona M. Helmsley and affiliates of Malkin Holdings LLC (provided that none of

Malkin Holdings LLC's affiliates that would become our direct or indirect subsidiary in the consolidation will have any liability for such payment) and certain investors in the Existing Entities who agree to contribute. We will not bear any of the settlement payment.

The settlement further provides for the certification of a class of investors in the Existing Entities, other than defendants and other related persons and entities, and a release of any claims of the members of the class against the defendants and related persons and entities, as well as underwriters and other advisors. The release in the settlement excludes certain claims, including but not limited to, claims arising from or related to any supplement to the Registration Statement on Form S-4 that is declared effective to which the plaintiffs' counsel objects in writing, which objection will not be unreasonably made or delayed, so long as plaintiffs' counsel has had adequate opportunity to review such supplement. There was no such supplement that plaintiff's counsel objected to in writing. The settlement was subject to court approval. It was not effective until such court approval is final, including the resolution of any appeal. Defendants continue to deny any wrongdoing or liability in connection with the allegations in the Original Class Actions.

On January 18, 2013, the parties jointly moved for preliminary approval of the settlement, for permission to send notice of the settlement to the class, and for the scheduling of a final settlement hearing. On January 28, 2013, six of the investors in Empire State Building Associates L.L.C. filed an objection to preliminary approval, and cross-moved to intervene in the Original Class Actions and for permission to file a separate complaint on behalf of the investors in Empire State Building Associates L.L.C. On February 21, 2013, the court denied the cross motion of such objecting investors, and the court denied permission for such objecting investors to file a separate complaint as part of the Original Class Actions, but permitted them to file a brief solely to support their allegation that the buyout would deprive non-consenting investors in Empire State Building Associates L.L.C. of "fair value" in violation of the New York Limited Liability Company Law. The court rejected the objecting investors' assertion that preliminary approval be denied and granted preliminary approval of the settlement.

Pursuant to a decision issued on April 30, 2013, the court rejected the allegation regarding the New York Limited Liability Company Law and ruled in Malkin Holdings LLC's favor, holding that such buyout provisions are legally binding and enforceable and that investors do not have the rights they claimed under the New York Limited Liability Company Law.

On May 2, 2013, the court held a hearing regarding final approval of the Original Class Actions settlement, at the conclusion of which the court stated that it intended to approve the settlement. On May 17, 2013, the court issued its Opinion and Order. The court rejected the objections by all objectors and upheld the settlement in its entirety. Of the approximately 4,500 class members who are investors in all of the Existing Entities included in the consolidation, 12 opted out of the settlement. Those who opted out will not receive any share of the settlement proceeds, but can pursue separate claims for monetary damages.

Also on May 17, 2013, the court issued its Opinion and Order on attorneys' fees. Class counsel applied for an award of \$15.0 million in fees and \$295,895 in expenses, which the court reduced to \$11.59 million in fees and \$265,282 in expenses (which are included within the \$55.0 million settlement payment).

The investors who challenged the buyout provision filed a notice of appeal of the court's April 30, 2013 decision and moved before the appellate court for a stay of all proceedings relating to the settlement, including such a stay as immediate interim relief. On May 1, 2013, their request for immediate interim relief was denied. On May 13, 2013, Malkin Holdings LLC filed its brief in opposition to the motion for the stay. On June 18, 2013, the appellate court denied the motion for the stay. On July 16, 2013, these investors filed their brief and other supporting papers on their appeal of the April 30, 2013 decision, which are required to perfect the appeal. On September 4, 2013, Malkin Holdings LLC filed its brief on the appeal, and also moved to dismiss the appeal on the grounds that these investors lack standing to pursue it. Malkin Holdings LLC contended that these investors were not entitled to appraisal under the New York Limited Liability Company Law because, among other reasons (i) they are not members of Empire State Building Associates L.L.C., and only members have such rights; (ii) the transaction in question is not a merger or consolidation as defined by statute, and appraisal only applies in those transactions; and (iii) when Empire State Building Associates L.L.C. was converted into a limited liability company, the parties agreed that no appraisal would apply. Moreover, Malkin Holdings LLC contended that only the 12 investors who opted out of the class action

settlement could pursue appraisal, because that settlement contains a broad release of (and there is an associated bar order from the court preventing) any such claims. Malkin Holdings LLC further noted that of the six investors attempting to pursue the appeal, only two had in fact opted out of the class action settlement. On September 13, 2013, these investors filed their reply brief on the appeal, and opposed the motion to dismiss. On September 19, 2013, Malkin Holdings LLC filed its reply brief on the motion to dismiss. On October 3, 2013, the appeals court denied the motion to dismiss without prejudice to address the matter directly on the appeal, effectively referring the issues raised in the motion to the panel that was to hear the

appeal itself. The appeals court heard argument on November 21, 2013, and in a Decision and Order dated February 25, 2014, it affirmed the trial court's ruling.

In addition, on June 20, 2013, these same investors, and one additional investor who also opposed the settlement of the Original Class Action, filed additional notices of appeal from the trial court's rulings in the Original Class Actions. These notices of appeal related to (i) the order entered February 22, 2013 granting preliminary approval of the Original Class Action settlement and setting a hearing for final approval; (ii) the order entered February 26, 2013, refusing to sign a proposed order to show cause for a preliminary injunction regarding the consolidation; (iii) an order entered April 2, 2013, denying the motion to intervene and to file a separate class action on behalf of Empire State Building Associates L.L.C. investors; (iv) the order entered April 10, 2013, refusing to sign the order to show cause seeking to extend the deadline for class members to opt out of the Original Class Action settlement; (v) the Final Judgment and Order entered May 17, 2013; (vi) the order entered May 17, 2013 approving the Original Class Action settlement; and (vii) the order entered May 17, 2013 awarding class counsel attorneys' fees and costs. On January 6, 2014, Class counsel moved to dismiss these additional appeals on the grounds that they were not timely perfected by filing an appellate brief and record. On February 6, 2014, the appeals court granted the motion unless the appeals were perfected by March 17, 2014.

On March 27, 2014, the investors who challenged the buyout provision moved in the appellate court for re-argument or in the alternative for leave to appeal the appeals court's ruling to the New York Court of Appeals. Opposition to the motion was filed on April 7, 2014. The appellate court denied the motion on May 22, 2014. The investors moved in the New York Court of Appeals for leave to appeal on June 26, 2014. Opposition to this motion was filed on July 11, 2014 and the court dismissed the motion by order dated September 18, 2014. On October 20, 2014, the investors moved to re-argue that dismissal. That motion was denied on December 17, 2014, and counsel for these investors has represented that the investors do not intend to pursue further appellate review of the court's April 30, 2013 ruling rejecting the challenge to the buyout provision. On March 3, 2015, plaintiffs' counsel filed a motion with the court for its approval of distribution of the net settlement fund. In that motion plaintiffs' counsel also asked for additional fees and expenses to be paid out of the fund. On March 20, 2015, Malkin Holdings LLC filed a response to that motion in which it supported distribution of the fund and took no position on additional fees and expenses. No opposition to the motion was filed and the court granted the motion. Substantially all of the net settlement fund has been distributed to the class, but a small amount remains outstanding.

On March 14, 2014, one of the investors who had filed a notice of appeal from the trial court's rulings in the Original Class Actions noted above perfected an appeal from the court's May 17, 2013 Final Judgment and Order and orders approving the Original Class Action Settlement and awarding class counsel attorneys' fees and costs. By stipulation of all counsel to the appeal dated September 12, 2014, the appeal was dismissed with prejudice. No other appeals were filed by the March 17, 2014 deadline set by the appeals court in its February 6, 2014 order. The Original Class Actions Settlement is final and non-appealable.

In addition, commencing December 24, 2013, four putative class actions, or the "Second Class Actions," were filed in New York State Supreme Court, New York County, against Malkin Holdings LLC, Peter L. Malkin, Anthony E. Malkin and Thomas N. Keltner, Jr. on behalf of former investors in Empire State Building Associates L.L.C. Generally, the Second Class Actions alleged that the defendants breached their fiduciary duties and were unjustly enriched. One of the Second Class Actions named us and our operating partnership as defendants, alleging that they aided and abetted the breaches of fiduciary duty. The Second Class Actions were consolidated on consent, and co-lead class counsel was appointed by order dated February 11, 2014. A Consolidated Amended Complaint was filed February 7, 2014, which did not name us or our operating partnership as defendants. It seeks monetary damages. On March 7, 2014, defendants filed a motion to dismiss the Second Class Actions, which the plaintiffs opposed and was fully submitted to the court on April 28, 2014. The court heard oral arguments on the motion on July 7, 2014, and the motion to dismiss was granted in a ruling entered July 21, 2014. The plaintiffs filed a notice of appeal on August 8, 2014. On January 12, 2015, the plaintiffs filed a motion to supplement the record on appeal to include additional materials from the Original Class Action, which the defendants opposed. The motion was denied on March 5, 2015. The plaintiffs perfected this appeal by filing their brief and the appellate record with the court on March 23, 2015. Oral argument on the appeal was held on October 28, 2015. On November 25, 2015, the appellate court affirmed

dismissal of the Second Class Actions. The plaintiffs moved the appellate court for leave to appeal to the New York Court of Appeals. On March 1, 2016, the appellate court denied the motion. On March 31, 2016, the plaintiffs moved for leave to appeal in the New York Court of Appeals, which the Court of Appeals denied on June 9, 2016. The time for any further appeal of this dismissal has now expired.

On or about October 14, 2014, the 12 investors (out of approximately 4,500 investors covered by the Original Class Actions) who opted out of the Original Class Actions filed an arbitration with the American Arbitration Association against Peter L. Malkin, Anthony E. Malkin, Thomas N. Keltner, Jr., and Malkin Holdings LLC, as respondents, alleging breach of fiduciary duty and related claims in connection with the consolidation. The statement of claim in that arbitration seeks

monetary damages and declaratory relief. The respondents filed an answering statement and counterclaims. On December 18, 2014, these claimants also filed a complaint in the United States District Court for the Southern District of New York alleging the same claims that they asserted in the arbitration. As alleged in the complaint, the claimants filed this lawsuit to toll the statute of limitations on their claims in the event it is determined that the claims are not subject to arbitration, and they plan to move to stay the lawsuit in favor of the pending arbitration. On February 2, 2015, the claimants filed an amended complaint adding an additional claim and making other non-substantive modifications to the original complaint. On March 12, 2015, the court stayed the action on consent of all parties pending the arbitration. The arbitration hearings commenced May 24, 2016 and proceeded for several days. The hearings are scheduled to resume December 19, 2016.

As with the prior claims challenging the consolidation and related matters, the defendants believe the allegations in the arbitration are entirely without merit, and they intend to defend vigorously.

In connection with the Offering and formation transactions, we entered into indemnification agreements with our directors, executive officers and chairman emeritus, providing for the indemnification by us for certain liabilities and expenses incurred as a result of actions brought, or threatened to be brought, against them. As a result, Anthony E. Malkin, Peter L. Malkin and Thomas N. Keltner, Jr. have defense and indemnity rights from us with respect to the Second Class Actions and the above-referenced arbitration.

Additionally, there is a risk that other third parties will assert claims against us, Malkin Holdings LLC, or any other party entitled to defense and indemnity from us, including, without limitation, claims that Malkin Holdings LLC breached its fiduciary duties to investors in the Existing Entities or that the consolidation violates the relevant operating agreements, and third parties may commence litigation related to such claims. As a result, we may incur costs associated with defending or settling such litigation or paying any judgment if we lose.

#### Unfunded Capital Expenditures

At September 30, 2016, we estimate that we will incur approximately \$57.1 million of capital expenditures for tenant improvements and leasing commissions on our consolidated properties pursuant to existing lease agreements. We expect to fund these capital expenditures with operating cash flow, additional property level mortgage financings, our unsecured revolving credit facility, other issuances of debt, and cash on hand. Future property acquisitions may require substantial capital investments for refurbishment and leasing costs. We expect that these financing requirements will be met in a similar fashion.

#### Ground Leases

Aggregate required payments on ground leases at September 30, 2016 are as follows (amounts in thousands):

2016	\$380
2017	1,518
2018	1,518
2019	1,518
2020	1,518
Thereafter	56,730
	\$63,182

#### Concentration of Credit Risk

Financial instruments that subject us to credit risk consist primarily of cash, restricted cash, tenant and other receivables and deferred rent receivables. At September 30, 2016, we held on deposit at various major financial institutions cash and cash equivalents and restricted cash balances in excess of amounts insured by the Federal Deposit Insurance Corporation.

#### Asset Retirement Obligations

We are required to accrue costs that we are legally obligated to incur on retirement of our properties which result from acquisition, construction, development and/or normal operation of such properties. Retirement includes sale, abandonment or disposal of a property. Under that standard, a conditional asset retirement obligation represents a legal obligation to perform an asset retirement activity in which the timing and/or method of settlement is conditional

on a future event that may or may not be within a company's control and a liability for a conditional asset retirement obligation must be recorded if the fair value of the obligation can be reasonably estimated. Environmental site assessments and investigations have identified asbestos or asbestos-containing building materials in certain of our properties. As of September 30, 2016, management has no plans to remove or alter these properties in a manner that would trigger federal and other applicable regulations for asbestos removal, and accordingly, the obligations to remove the asbestos or asbestos-containing building materials from these properties have



indeterminable settlement dates. As such, we are unable to reasonably estimate the fair value of the associated conditional asset retirement obligation. However ongoing asbestos abatement, maintenance programs and other required documentation are carried out as required and related costs are expensed as incurred.

#### Other Environmental Matters

Certain of our properties have been inspected for soil contamination due to pollutants, which may have occurred prior to our ownership of these properties or subsequently in connection with its development and/or its use. Required remediation to such properties has been completed, and as of September 30, 2016, our management believes that there are no obligations related to environmental remediation other than maintaining the affected sites in conformity with the relevant authority's mandates and filing the required documents. All such maintenance costs are expensed as incurred. We expect that resolution of the environmental matters relating to the above will not have a material impact on our business, assets, consolidated financial condition, results of operations or liquidity. However, we cannot be certain that we have identified all environmental liabilities at our properties, that all necessary remediation actions have been or will be undertaken at our properties or that we will be indemnified, in full or at all, in the event that such environmental liabilities arise.

#### Insurance Coverage

We carry insurance coverage on our properties of types and in amounts with deductibles that we believe are in line with coverage customarily obtained by owners of similar properties.

### 9. Equity

On August 23, 2016, an affiliate of Qatar Investment Authority ("QIA") purchased 29,610,854 newly issued Class A common shares at \$21.00 per share, equivalent to a 9.9% economic interest in us on a fully diluted basis (representing a 19.4% ownership of Class A common shares). However, QIA can only vote shares equivalent to 9.9% of all voting securities, with the balance of their shares to be voted by us in accord with the votes of all other voting securities. QIA has a top-up right to maintain their ownership stake at 9.9% over time. We received approximately \$621.8 million in gross proceeds from the sale.

In connection with our sale of a 9.9% fully diluted interest in us to QIA in August 2016, we agreed, subject to certain minimum thresholds and conditions, to indemnify QIA for certain applicable U.S. federal and state taxes paid by QIA in connection with any dividends we pay that are attributable to capital gains from the sale or exchange of any U.S. real property interests. If we were to trigger our tax indemnification obligations under this agreement, we would be required to pay QIA for the resulting tax consequences, as applicable.

#### Shares and Units

An operating partnership unit ("OP Unit") and a share of our common stock have essentially the same economic characteristics as they receive the same per unit profit distributions of our operating partnership. On the one-year anniversary of issuance, an OP Unit may be tendered for redemption for cash; however, we have sole and absolute discretion, and the authorized common stock, to exchange OP Units for shares of common stock on a one-for-one basis instead of cash.

Long-term incentive plan ("LTIP") units are a special class of partnership interests in our operating partnership. Each LTIP unit awarded will be deemed equivalent to an award of one share of stock under the First Amended and Restated Empire State Realty Trust, Inc. and Empire State Realty OP, L.P. 2013 Equity Incentive Plan ("2013 Plan"), reducing the availability for other equity awards on a one-for-one basis. The vesting period for LTIP units, if any, will be determined at the time of issuance. Under the terms of the LTIP units, our operating partnership will revalue for tax purposes its assets upon the occurrence of certain specified events, and any increase in valuation from the time of grant until such event will be allocated first to the holders of LTIP units to equalize the capital accounts of such holders with the capital accounts of OP unitholders. Subject to any agreed upon exceptions, once vested and having achieved parity with OP unitholders, LTIP units are convertible into OP Units in our operating partnership on a one-for-one basis.

With the exception of performance based LTIP units granted in 2016, all LTIP units issued in connection with annual

equity awards, whether vested or not, receive the same per unit distributions as operating partnership units, which equal per share dividends (both regular and special) on our common stock. Performance based LTIP units granted in 2016 receive 10% of such distributions currently, unless and until such LTIP units are earned based on performance, at which time they will receive the accrued and unpaid 90% and will commence receiving 100% of such distributions thereafter.

The following is net income attributable to common stockholders and the issuance of our Class A shares in exchange for the conversion of OP Units into common stock (amounts in thousands):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Net income attributable to common stockholders	\$ 15,973	\$ 11,220	\$ 34,490	\$ 25,478
Increase in additional paid-in capital for the conversion of OP Units into common stock	5,016	24,428	20,217	53,013
Change from net income attributable to common stockholders and transfers from non-controlling interests	\$ 20,989	\$ 35,648	\$ 54,707	\$ 78,491

As of September 30, 2016, there were 299,099,533 OP Units outstanding, of which 154,925,644, or 51.8%, were owned by us and 144,173,889, or 48.2%, were owned by other limited partners, including certain directors, officers and other members of executive management.

#### Dividends and Distributions

Total dividends paid to common stockholders were \$16.2 million and \$39.5 million for the three and nine months ended September 30, 2016, respectively, and \$10.0 million and \$29.0 million for the three and nine months ended September 30, 2015, respectively. Total distributions paid to OP unitholders, excluding inter-company distributions, were \$15.1 million and \$43.1 million for the three and nine months ended September 30, 2016, respectively, and \$12.8 million and \$39.2 million for the three and nine months ended September 30, 2015, respectively. Total distributions paid to preferred unitholders were \$0.2 million and \$0.7 million for the three and nine months ended September 30, 2016, respectively, and \$0.2 million and \$0.7 million for the three and nine months ended September 30, 2015, respectively.

#### Incentive and Share-Based Compensation

The 2013 Plan provides for grants to directors, employees and consultants consisting of stock options, restricted stock, dividend equivalents, stock payments, performance shares, LTIP units, stock appreciation rights and other incentive awards. An aggregate of 12.2 million shares of our common stock is authorized for issuance under awards granted pursuant to the 2013 Plan, and as of September 30, 2016, 8.3 million shares of common stock remain available for future issuance.

In January 2015, we made a grant of LTIP units to an employee under the 2013 Plan. We granted a total of 9,531 LTIP units with a fair market value of \$0.2 million. The award is subject to time-based vesting and all LTIP units vest on April 1, 2020, subject generally to the grantee's continued employment.

In February 2015, we made grants of LTIP units to executive officers under the 2013 Plan. At such time, we granted a total of 168,033 LTIP units that are subject to time-based vesting and 154,266 LTIP units that are subject to performance-based vesting, with fair market values of \$2.9 million for the time-based vesting awards and \$1.3 million for the performance-based vesting awards. The awards subject to time-based vesting vest ratably over four years from January 1, 2015, subject generally to the grantee's continued employment. The first installment vests on the first-year anniversary date of January 1, 2015 and the remainder will vest thereafter in three equal annual installments. The vesting of the LTIP units subject to performance-based vesting is based on the achievement of absolute and relative total stockholder return hurdles over a three-year performance period, commencing on January 1, 2015. Following the completion of the three-year performance period, our compensation committee will determine the number of LTIP units to which the grantee is entitled based on our performance relative to the performance hurdles set forth in the LTIP unit award agreements the grantee entered into in connection with the award grant. These units then vest in two installments, with the first installment vesting on January 1, 2018 and the second installment vesting on January 1, 2019, subject generally to the grantee's continued employment on those dates.

In February 2015, we made grants of LTIP units and restricted stock to certain other employees under the 2013 Plan. At such time, we granted a total of 33,398 LTIP units and 14,315 shares of restricted stock that are subject to time-based vesting and 33,398 LTIP units and 14,315 shares of restricted stock that are subject to performance-based

vesting, with fair market values of \$0.8 million for the time-based vesting awards and \$0.4 million for the performance-based vesting awards. The awards subject to time-based vesting vest ratably over four years from January 1, 2015, subject generally to the grantee's continued employment. The first installment vests on the first-year anniversary date of January 1, 2015 and the remainder will vest thereafter in three equal annual installments. The vesting of the awards subject to performance-based vesting is based on the achievement of absolute and relative total stockholder return hurdles over a three-year performance period, commencing on

January 1, 2015. Following the completion of the three-year performance period, our compensation committee will determine the number of LTIP units or shares to which the grantee is entitled based on our performance relative to the performance hurdles set forth in the award agreements the grantee entered into in connection with the award grant. These units and shares then vest in two installments, with the first installment vesting on January 1, 2018 and the second installment vesting on January 1, 2019, subject generally to the grantee's continued employment on those dates.

In February 2015, we made a grant of LTIP units to an executive officer under the 2013 Plan. At such time, we granted a total of 13,736 LTIP units that are subject to time-based vesting and 13,736 LTIP units that are subject to performance-based vesting, with fair market values of \$0.2 million for the time-based vesting awards and \$0.1 million for the performance-based vesting awards. The awards subject to time-based vesting vest ratably over four years from the date of the grant, subject generally to the grantee's continued employment. The first installment vests on the first-year anniversary date of the grant and the remainder will vest thereafter in three equal annual installments. The vesting of the LTIP units subject to performance-based vesting is based on the achievement of absolute and relative total stockholder return hurdles over a three-year performance period, commencing on February 1, 2015. Following the completion of the three-year performance period, our compensation committee will determine the number of LTIP units to which the grantee is entitled based on our performance relative to the performance hurdles set forth in the LTIP unit award agreements the grantee entered into in connection with the award grant. These units then vest in two installments, with the first installment vesting on February 1, 2018 and the second installment vesting on February 1, 2019, subject generally to the grantee's continued employment on those dates.

In June 2015, we made grants of LTIP units to our non-employee directors under the 2013 Plan. At such time, we granted a total of 35,082 LTIP units that are subject to time-based vesting with fair market values of \$0.6 million. The awards vest ratably over three years from the date of the grant, subject generally to the director's continued service on our Board of Directors.

We made other grants during 2015 with fair market values of less than \$0.1 million in the aggregate.

In February 2016, we made grants of LTIP units to executive officers under the 2013 Plan. At such time, we granted a total of 368,225 LTIP units that are subject to time-based vesting and 1,230,228 LTIP units that are subject to performance-based vesting, with fair market values of \$5.6 million for the time-based vesting awards and \$8.8 million for the performance-based vesting awards. The awards subject to time-based vesting vest ratably over four years from January 1, 2016, subject generally to the grantee's continued employment. The first installment vests on January 1, 2017 and the remainder will vest thereafter in three equal annual installments. The vesting of the LTIP units subject to performance-based vesting is based on the achievement of absolute and relative total stockholder return hurdles over a three-year performance period, commencing on January 1, 2016. Following the completion of the three-year performance period, our compensation committee will determine the number of LTIP units to which the grantee is entitled based on our performance relative to the performance hurdles set forth in the LTIP unit award agreements the grantee entered into in connection with the award grant. These units then vest in two installments, with the first installment vesting on January 1, 2019 and the second installment vesting on January 1, 2020, subject generally to the grantee's continued employment on those dates.

In February 2016, we made a grant of LTIP units to an executive officer under the 2013 Plan. We granted a total of 62,814 LTIP units with a fair market value of \$1.0 million. The award is subject to time-based vesting of 30% after three years, 30% after four years, and 40% after five years, subject to the grantee's continued employment.

In February 2016, we made grants of LTIP units and restricted stock to certain other employees under the 2013 Plan. At such time, we granted a total of 47,168 LTIP units and 44,198 shares of restricted stock that are subject to time-based vesting and 112,925 LTIP units that are subject to performance-based vesting, with fair market values of \$1.4 million for the time-based vesting awards and \$0.8 million for the performance-based vesting awards. The awards subject to time-based vesting vest ratably over four years from January 1, 2016, subject generally to the grantee's continued employment. The first installment vests on January 1, 2017 and the remainder will vest thereafter in three equal annual installments. The vesting of the awards subject to performance-based vesting is based on the

achievement of absolute and relative total stockholder return hurdles over a three-year performance period, commencing on January 1, 2016. Following the completion of the three-year performance period, our compensation committee will determine the number of LTIP units to which the grantee is entitled based on our performance relative to the performance hurdles set forth in the award agreements the grantee entered into in connection with the award grant. These units and shares then vest in two installments, with the first installment vesting on January 1, 2019 and the second installment vesting on January 1, 2020, subject generally to the grantee's continued employment on those dates.

In June 2016, we made grants of LTIP units to our non-employee directors under the 2013 Plan. At such time, we granted a total of 43,257 LTIP units that are subject to time-based vesting with fair market values of \$0.8 million. The awards

vest ratably over three years from the date of the grant, subject generally to the director's continued service on our Board of Directors.

We made other grants during 2016 with fair market values of \$0.1 million in the aggregate.

Share-based compensation is measured at the fair value of the award on the date of grant and recognized as an expense on a straight-line basis over the vesting period. For the performance-based LTIP units and restricted stock awards, the fair value of the awards was estimated using a Monte Carlo Simulation model. Our stock price, along with the prices of the comparative indexes, is assumed to follow the Geometric Brownian Motion Process. Geometric Brownian Motion is a common assumption when modeling in financial markets, as it allows the modeled quantity (in this case the stock price) to vary randomly from its current value and take any value greater than zero. The volatilities of the returns on our stock price and the comparative indexes were estimated based on implied volatilities and historical volatilities using a six-year look-back period. The expected growth rate of the stock prices over the performance period is determined with consideration of the risk free rate as of the grant date. For LTIP units and restricted stock grants that are time-vesting, we estimate the stock compensation expense based on the fair value of the stock at the grant date.

Share-based compensation expense has been adjusted by an amount of estimated forfeitures. Forfeitures are estimated based on historical experience at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Based on an analysis of historical data, we have calculated a 0% annual forfeiture rate for members of the Board of Directors, a 0% annual forfeiture rate for executive officers, and for all other employees a 5% annual forfeiture rate. We reevaluate this analysis periodically and adjust these estimated forfeiture rates as necessary. To the extent actual results or updated estimates differ from our current estimates, such amounts will be recorded as a cumulative adjustment in the period estimates are revised.

LTIP units and restricted stock issued during the nine months ended September 30, 2016 were valued at \$18.4 million. The weighted-average per unit or share fair value was \$9.60 for grants issued in 2016. The per unit or share granted in 2016 was estimated on the respective dates of grant using the following assumptions: an expected life of 2.8 years, a dividend rate of 2.10%, a risk-free interest rate of 0.84% and an expected price volatility of 24.0%.

No other stock options, dividend equivalents, or stock appreciation rights were issued or outstanding in 2016.

The following is a summary of restricted stock and LTIP unit activity for the nine months ended September 30, 2016:

	Restricted Stock	LTIP Units	Weighted Average Grant Fair Value
Unvested balance at December 31, 2015	97,592	1,415,895	\$ 11.04
Vested	(4,350 )	(124,843 )	15.89
Granted	47,071	1,868,629	9.58
Forfeited	(278 )	—	17.97
Unvested balance at September 30, 2016	140,035	3,159,681	\$ 10.00

The LTIP unit and restricted stock awards will immediately vest upon the later of (i) the date the grantee attains the age of 60 and (ii) the date on which grantee has first completed ten years of continuous service with our company or its affiliates. For award agreements that qualify, we recognize noncash compensation expense on the grant date for the time-based awards and ratably over the vesting period for the performance-based awards, and accordingly, we recognized \$0.1 million and \$0.6 million for the three and nine months ended September 30, 2016, respectively, and \$0.0 million and \$0.5 million for the three and nine months ended September 30, 2015, respectively. Unrecognized compensation expense was \$0.5 million at September 30, 2016, which will be recognized over a period of 2.2 years. For the remainder of the LTIP unit and restricted stock awards, we recognize noncash compensation expense ratably over the vesting period, and accordingly, we recognized noncash compensation expense of \$2.5 million and \$6.7 million for the three and nine months ended September 30, 2016, respectively, and \$1.4 million and \$3.8 million for the three and nine months ended September 30, 2015, respectively. Unrecognized compensation expense was \$21.0 million at September 30, 2016, which will be recognized over a weighted average period of 2.6 years.

Earnings Per Share

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Earnings per share for the three and nine months ended September 30, 2016 and 2015 is computed as follows (amounts in thousands, except per share amounts):

	Three Months Ended, September 30,		Nine Months Ended, September 30,	
	2016	2015	2016	2015
<b>Numerator - Basic:</b>				
Net income	\$32,897	\$ 26,085	\$74,242	\$ 60,558
Private perpetual preferred unit distributions	(234 )	(234 )	(702 )	(702 )
Net income attributable to non-controlling interests	(16,690 )	(14,631 )	(39,050 )	(34,378 )
Earnings allocated to unvested shares	(11 )	(7 )	(27 )	(19 )
Net income attributable to common stockholders - basic	\$15,962	\$ 11,213	\$34,463	\$ 25,459
<b>Numerator - Diluted:</b>				
Net income	\$32,897	\$ 26,085	\$74,242	\$ 60,558
Private perpetual preferred unit distributions	(234 )	(234 )	(702 )	(702 )
Earnings allocated to unvested shares and LTIP units	(11 )	(161 )	(27 )	(425 )
Net income attributable to common stockholders - diluted	\$32,652	\$ 25,690	\$73,513	\$ 59,431
<b>Denominator:</b>				
Weighted average shares outstanding - basic	136,831	115,900	126,740	112,741
Operating partnership units	141,908	149,973	143,648	153,127
Effect of dilutive securities:				
Stock-based compensation plans	1,090	—	378	—
Exchangeable senior notes	785	—	262	—
Weighted average shares outstanding - diluted	280,614	265,873	271,028	265,868
<b>Earnings per share:</b>				
Basic	\$0.12	\$ 0.10	\$0.27	\$ 0.23
Diluted	\$0.12	\$ 0.10	\$0.27	\$ 0.22

There were 1,033,044 and 757,119 antidilutive shares and LTIP units for the three and nine months ended September 30, 2016, respectively, and 802,462 and 692,209 antidilutive shares and LTIP units for three and nine months ended September 30, 2015, respectively.

## 10. Related Party Transactions

### Supervisory Fee Revenue

We earned supervisory fees from affiliated entities not included in our condensed consolidated financial statements of \$0.3 million and \$0.5 million for the three months ended September 30, 2016 and 2015, respectively, and \$1.1 million and \$1.4 million for the nine months ended September 30, 2016 and 2015, respectively. These fees are included within third-party management and other fees.

### Property Management Fee Revenue

We earned property management fees from affiliated entities not included in our condensed consolidated financial statements of \$0.1 million and \$0.1 million for the three months ended September 30, 2016 and 2015, respectively, and \$0.3 million and \$0.2 million for the nine months ended September 30, 2016 and 2015, respectively. These fees are included within third-party management and other fees.

### Other



We are reimbursed at allocable cost for 647 square feet of shared office space, equipment, and administrative support, as was done prior to our formation, and we receive rent generally at market rental rate for 3,074 square feet of leased space, from entities affiliated with Anthony E. Malkin at one of our properties aggregating \$0.07 million and \$0.06 million for the three months ended September 30, 2016 and 2015, respectively, and \$0.2 million and \$0.2 million for the nine months ended September 30, 2016 and 2015, respectively. During August 2016, the previously shared office and leased spaces relocated to a new 5,351 square foot leased space at one of our properties, paying rent generally at a market rental rate. The affiliate has the right to cancel such lease without special payment on 90 days' notice. One of our directors is a general partner in an investment fund, which owns more than a 10% economic and voting interest in one of our tenants with an annualized rent of \$5.7 million as of September 30, 2016.

#### 11. Segment Reporting

We have identified two reportable segments: (1) real estate and (2) observatory. Our real estate segment includes all activities related to the ownership, management, operation, acquisition, redevelopment, repositioning and disposition of our real estate assets. Our observatory segment includes the operation of the 86th and 102nd floor observatories at the Empire State Building. These two lines of businesses are managed separately because each business requires different support infrastructures, provides different services and has dissimilar economic characteristics such as investments needed, stream of revenues and marketing strategies. We account for intersegment sales and transfers as if the sales or transfers were to third parties, that is, at current market prices. We include our historical construction operation in "Other," and it includes all activities related to providing construction services to tenants and to other entities within and outside our company. As of March 27, 2015, we no longer solicited new business for our construction management business. We completed all projects that were in progress.

The following tables provide components of segment profit for each segment for the three and nine months ended September 30, 2016 and 2015 (amounts in thousands):

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Three Months Ended September 30, 2016

	Real Estate	Observatory	Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 115,634	\$ —	\$ —	\$ 115,634
Intercompany rental revenue	22,983	—	(22,983)	—
Tenant expense reimbursement	19,176	—	—	19,176
Observatory revenue	—	38,093	—	38,093
Third-party management and other fees	404	—	—	404
Other revenue and fees	2,536	5	—	2,541
Total revenues	160,733	38,098	(22,983)	175,848
Operating expenses:				
Property operating expenses	38,585	—	—	38,585
Intercompany rent expense	—	22,983	(22,983)	—
Ground rent expense	2,331	—	—	2,331
General and administrative expenses	11,798	—	—	11,798
Observatory expenses	—	7,250	—	7,250
Real estate taxes	24,691	—	—	24,691
Depreciation and amortization	37,421	186	—	37,607
Total operating expenses	114,826	30,419	(22,983)	122,262
Total operating income	45,907	7,679	—	53,586
Interest expense	(17,939)	) —	—	(17,939)
Income before income taxes	27,968	7,679	—	35,647
Income tax expense	(332)	) (2,418)	) —	(2,750)
Net income	\$ 27,636	\$ 5,261	\$ —	\$ 32,897
Segment assets	\$ 3,636,262	\$ 246,307	\$ —	\$ 3,882,569
Expenditures for segment assets	\$ 52,828	\$ —	\$ —	\$ 52,828

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	Three Months Ended September 30, 2015				
	Real Estate	Observatory	Other	Intersegment Elimination	Total
Revenues:					
Rental revenue	\$ 110,903	\$ —	\$ —	\$ —	\$ 110,903
Intercompany rental revenue	20,828	—	—	(20,828)	—
Tenant expense reimbursement	23,096	—	—	—	23,096
Observatory revenue	—	35,702	—	—	35,702
Third-party management and other fees	618	—	—	—	618
Other revenue and fees	5,460	—	—	—	5,460
Total revenues	160,905	35,702	—	(20,828)	175,779
Operating expenses:					
Property operating expenses	41,052	—	—	—	41,052
Intercompany rent expense	—	20,828	—	(20,828)	—
Ground rent expense	2,331	—	—	—	2,331
General and administrative expenses	10,182	—	—	—	10,182
Observatory expenses	—	7,896	—	—	7,896
Real estate taxes	23,613	—	—	—	23,613
Acquisition expenses	193	—	—	—	193
Depreciation and amortization	45,072	97	—	—	45,169
Total operating expenses	122,443	28,821	—	(20,828)	130,436
Total operating income	38,462	6,881	—	—	45,343
Interest expense	(16,680)	) —	—	—	(16,680)
Income before income taxes	21,782	6,881	—	—	28,663
Income tax expense	(474)	) (2,104)	) —	—	(2,578)
Net income	\$ 21,308	\$ 4,777	\$ —	\$ —	\$ 26,085
Segment assets	\$ 3,070,234	\$ 235,937	\$ 2,596	\$ —	\$ 3,308,767
Expenditures for segment assets	\$ 39,915	\$ 187	\$ —	\$ —	\$ 40,102

## Nine Months Ended September 30, 2016

	Real Estate Observatory		Intersegment Elimination	Total
Revenues:				
Rental revenue	\$ 343,155	\$ —	\$ —	\$ 343,155
Intercompany rental revenue	55,189	—	(55,189)	—
Tenant expense reimbursement	56,350	—	—	56,350
Observatory revenue	—	91,112	—	91,112
Third-party management and other fees	1,372	—	—	1,372
Other revenue and fees	6,738	10	—	6,748
Total revenues	462,804	91,122	(55,189)	498,737
Operating expenses:				
Property operating expenses	115,075	—	—	115,075
Intercompany rent expense	—	55,189	(55,189)	—
Ground rent expense	6,994	—	—	6,994
General and administrative expenses	35,623	—	—	35,623
Observatory expenses	—	21,900	—	21,900
Real estate taxes	71,773	—	—	71,773
Acquisition expenses	98	—	—	98
Depreciation and amortization	115,002	380	—	115,382
Total operating expenses	344,565	77,469	(55,189)	366,845
Total operating income	118,239	13,653	—	131,892
Interest expense	(53,310 )	—	—	(53,310 )
Income before income taxes	64,929	13,653	—	78,582
Income tax expense	(1,018 )	(3,322 )	—	(4,340 )
Net income	\$ 63,911	\$ 10,331	\$ —	\$ 74,242
Expenditures for segment assets	\$ 140,052	\$ 47	\$ —	\$ 140,099

## Nine Months Ended September 30, 2015

	Real Estate	Observatory	Other	Intersegment Elimination	Total
Revenues:					
Rental revenue	\$ 333,827	\$ —	\$ —	\$ —	\$ 333,827
Intercompany rental revenue	51,402	—	—	(51,402 )	—
Tenant expense reimbursement	59,878	—	—	—	59,878
Observatory revenue	—	84,525	—	—	84,525
Construction revenue	—	—	5,696	(3,715 )	1,981
Third-party management and other fees	1,658	—	—	—	1,658
Other revenue and fees	10,565	—	—	—	10,565
Total revenues	457,330	84,525	5,696	(55,117 )	492,434
Operating expenses:					
Property operating expenses	120,341	—	—	—	120,341
Intercompany rent expense	—	51,402	—	(51,402 )	—
Ground rent expense	6,994	—	—	—	6,994
General and administrative expenses	28,395	—	—	—	28,395
Observatory expenses	—	23,391	—	—	23,391
Construction expenses	—	—	6,539	(3,317 )	3,222
Real estate taxes	69,543	—	—	—	69,543
Acquisition expenses	193	—	—	—	193
Depreciation and amortization	125,847	268	101	—	126,216
Total operating expenses	351,313	75,061	6,640	(54,719 )	378,295
Total operating income (loss)	106,017	9,464	(944 )	(398 )	114,139
Interest expense	(50,298 )	—	—	—	(50,298 )
Income (loss) before income taxes	55,719	9,464	(944 )	(398 )	63,841
Income tax benefit (expense)	(1,247 )	(2,376 )	340	—	(3,283 )
Net income (loss)	\$ 54,472	\$ 7,088	\$ (604)	\$ (398 )	\$ 60,558
Expenditures for segment assets	\$ 109,104	\$ 211	\$ —	\$ —	\$ 109,315

## 12. Subsequent Events

None.

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

Unless the context otherwise requires or indicates, references in this section to "we," "our" and "us" refer to our company and its consolidated subsidiaries.

### FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). For these statements, we claim the protections of the safe harbor for forward-looking statements contained in such Section. You can identify forward-looking statements by the use of forward-looking terminology such as "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "estimates," "contemplates," "aims," "continues," "would" or "anticipates" or the negative of these words and phrases or similar words or phrases. In particular, statements pertaining to our capital resources, portfolio performance, dividend policy and results of operations contain forward-looking statements. Likewise, all of our statements regarding anticipated growth in our portfolio from operations, acquisitions and anticipated market conditions, demographics and results of operations are forward-looking statements.

Forward-looking statements are subject to substantial risks and uncertainties, many of which are difficult to predict and are generally beyond our control, and you should not rely on them as predictions of future events.

Forward-looking statements depend on assumptions, data or methods which may be incorrect or imprecise, and we may not be able to realize them. We do not guarantee that the transactions and events described will happen as described (or that they will happen at all).

The following factors, among others, could cause actual results and future events to differ materially from those set forth or contemplated in the forward-looking statements:

- changes in our industry, the real estate markets, either nationally or in Manhattan or the greater New York metropolitan area;
- resolution of the arbitration involving the company;
- reduced demand for office or retail space;
- general volatility of the capital and credit markets and the market price of our Class A common stock and our publicly-traded OP Units;
- changes in our business strategy;
- changes in technology and market competition, which affect utilization of our broadcast or other facilities;
- changes in domestic or international tourism, including geopolitical events and currency exchange rates;
- defaults on, early terminations of, or non-renewal of leases by tenants;
- bankruptcy or insolvency of a major tenant or a significant number of smaller tenants;
- fluctuations in interest rates;
- increased operating costs;
- declining real estate valuations and impairment charges;
  - termination or expiration of our ground leases;
- availability, terms and deployment of capital;
- our failure to obtain necessary outside financing, including our unsecured revolving credit facility;
- our leverage;
- decreased rental rates or increased vacancy rates;
- our failure to generate sufficient cash flows to service our outstanding indebtedness;
- our failure to redevelop and reposition properties successfully or on the anticipated timeline or at the anticipated costs;
- difficulties in identifying properties to acquire and completing acquisitions;
-



risks of real estate development (including our Metro Tower development site), including the cost of construction delays and cost overruns;

• failure to operate properties successfully;

• inability to manage our growth effectively;

• inability to make distributions to our stockholders in the future;

• impact of changes in governmental regulations, tax law and rates and similar matters;

• failure to continue to qualify as a real estate investment trust, or REIT;

• a future terrorist event in the U.S.;

• environmental uncertainties and risks related to adverse weather conditions and natural disasters;

- lack, or insufficient amounts, of insurance;

• unavailability of, and inability to attract and retain, qualified personnel;

• conflicts of interest affecting any of our senior management team;

• misunderstanding of our competition;

• changes in real estate and zoning laws and increases in real property tax rates;

• risks associated with security breaches through cyberattacks, cyber intrusions or otherwise, as well as other significant disruptions of our technology (IT) networks related systems, which support our operations and our buildings;

• inability to comply with the laws, rules and regulations applicable to companies and, in particular, public companies; and

other factors discussed under “Item 1A, Risk Factors” of our Annual Report on Form 10-K for the year ended December 31, 2015 and additional factors that may be contained in any filing we make with the SEC, including Part II, Item 1A of our Quarterly Reports on Form 10-Q.

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We disclaim any obligation to publicly update or revise any forward-looking statement to reflect changes in underlying assumptions or factors, or new information, data or methods, future events or other changes after the date of this Quarterly Report on Form 10-Q, except as required by applicable law. For a further discussion of these and other factors that could impact our future results, performance or transactions, see the sections entitled “Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2015 which we filed with the SEC. You should not place undue reliance on any forward-looking statements, which are based only on information currently available to us.

#### Overview

We are a self-administered and self-managed real estate investment trust, or REIT, that owns, manages, operates, acquires and repositions office and retail properties in Manhattan and the greater New York metropolitan area.

Highlights for the three months ended September 30, 2016 included:

• Achieved net income attributable to the Company of \$16.0 million and Core Funds From Operations of \$71.9 million.

• Occupancy and leased percentages at September 30, 2016:

• Total portfolio was 87.9% occupied; including signed leases not commenced (“SLNC”), the total portfolio was 90.3% leased.

• Manhattan office portfolio (excluding the retail component of these properties) was 86.6% occupied; including SLNC, the Manhattan office portfolio was 89.5% leased.

• Retail portfolio was 86.3% occupied; including SLNC, the retail portfolio was 88.3% leased.

• Empire State Building was 90.1% occupied; including SLNC, the Empire State Building was 91.5% leased.

• Executed 51 leases, representing 348,770 rentable square feet across the total portfolio, achieving a 30.2% increase in mark-to-market rent over previous fully escalated rents on new, renewal, and expansion leases.

• Signed 20 new leases representing 224,125 rentable square feet in the third quarter 2016 for the Manhattan office portfolio (excluding the retail component of these properties), achieving an increase of 59.3% in mark-to-market rent over previous fully escalated rents.

• The Empire State Building Observatory revenue for the third quarter 2016 grew 6.7% to \$38.1 million from \$35.7 million in the third quarter 2015.

• On August 23, 2016, we issued 29,610,854 Class A common shares at \$21.00 per share in a private placement transaction with QIA which raised approximately \$622 million in gross proceeds.

• Declared a dividend in the amount of \$0.105 per share for the third quarter 2016.

As of September 30, 2016, our total portfolio contained 10.1 million rentable square feet of office and retail space. We owned 14 office properties (including three long-term ground leasehold interests) encompassing approximately 9.4 million rentable square feet of office space. Nine of these properties are located in the midtown Manhattan market and aggregate approximately 7.6 million rentable square feet of office space, including the Empire State Building. Our Manhattan office



properties also contain an aggregate of 502,429 rentable square feet of premier retail space on their ground floor and/or contiguous levels. Our remaining five office properties are located in Fairfield County, Connecticut and Westchester County, New York, encompassing in the aggregate approximately 1.9 million rentable square feet. The majority of square footage for these five properties is located in densely populated metropolitan communities with immediate access to mass transportation. Additionally, we have entitled land at the Stamford Transportation Center in Stamford, Connecticut, adjacent to one of our office properties, that will support the development of an approximately 380,000 rentable square foot office building and garage, which we refer to herein as Metro Tower. As of September 30, 2016, our portfolio included four standalone retail properties located in Manhattan and two standalone retail properties located in the city center of Westport, Connecticut, encompassing 204,452 rentable square feet in the aggregate.

The Empire State Building is our flagship property. The Empire State Building provides us with a diverse source of revenue through its office and retail leases, observatory operations and broadcasting licenses, and related leased space. Our observatory operations are a separate reporting segment. Our observatory operations are subject to regular patterns of tourist activity in Manhattan. During the past ten years, approximately 16.0% to 18.0% of our annual observatory revenue was realized in the first quarter, 26.0% to 28.0% was realized in the second quarter, 31.0% to 33.0% was realized in the third quarter, and 23.0% to 25.0% was realized in the fourth quarter.

The components of the Empire State Building revenue are as follows (dollars in thousands):

	Nine months ended September 30,					
	2016		2015			
Office leases	\$89,026	38.9 %	\$80,052	37.1 %		
Retail leases	7,223	3.2 %	7,826	3.6 %		
Tenant reimbursements & other income	18,530	8.1 %	20,675	9.6 %		
Observatory operations	91,112	39.8 %	84,525	39.2 %		
Broadcasting licenses and leases	22,771	10.0 %	22,784	10.5 %		
Total	\$228,662	100.0 %	\$215,862	100.0 %		

We have been undertaking a comprehensive redevelopment and repositioning strategy of our Manhattan office properties. This strategy is designed to improve the overall value and attractiveness of our properties and has contributed significantly to our tenant repositioning efforts, which seek to increase our occupancy; raise our rental rates; increase our rentable square feet; increase our aggregate rental revenue; lengthen our average lease term; increase our average lease size; and improve our tenant credit quality. These improvements include restored, renovated and upgraded or new lobbies; elevator modernization; renovated public areas and bathrooms; refurbished or new windows; upgrade and standardization of retail storefront and signage; façade restorations; modernization of building-wide systems; and enhanced tenant amenities. We have also aggregated smaller spaces in order to offer larger blocks of office space, including multiple floors, that are attractive to larger, higher credit-quality tenants and to offer new, pre-built suites with improved layouts. This strategy has shown what we believe to be attractive results to date, and we believe has the potential to improve our operating margins and cash flows in the future. We believe we will continue to enhance our tenant base and improve rents as our pre-redevelopment leases continue to expire and be re-leased. From 2002 through September 30, 2016, we have invested a total of approximately \$698.0 million (excluding tenant improvement costs and leasing commissions) in our Manhattan office properties pursuant to this program. We are in the process of substantially completing the redevelopment and repositioning program as originally contemplated. We intend to fund these capital improvements through a combination of operating cash flow and borrowings.

As of September 30, 2016, excluding principal amortization, we had no debt maturing in 2016 and approximately \$336.0 million of debt maturing in 2017, and we had total debt outstanding of approximately \$1.6 billion, with a weighted average interest rate of 4.15% (excluding premiums and discount) and a weighted average maturity of 4.9 years. As of September 30, 2016, we had cash and cash equivalents of \$594.3 million. Our consolidated net debt to total market capitalization was approximately 14.0% as of September 30, 2016.

As of March 2015, we no longer solicited new business for our construction management business. We have since completed all projects that were in progress and closed that business.

## Results of Operations

## Overview

The discussion below relates to our financial condition and results of operations for the three and nine months ended September 30, 2016 and 2015, respectively.

## Three Months Ended September 30, 2016 Compared to the Three Months Ended September 30, 2015

The following table summarizes our historical results of operations for the three months ended September 30, 2016 and 2015 (dollars in thousands):

	Three Months Ended		Change	%	
	2016	2015			
Revenues:					
Rental revenue	\$115,634	\$110,903	\$4,731	4.3	%
Tenant expense reimbursement	19,176	23,096	(3,920)	(17.0)	%
Observatory revenue	38,093	35,702	2,391	6.7	%
Third-party management and other fees	404	618	(214)	(34.6)	%
Other revenues and fees	2,541	5,460	(2,919)	(53.5)	%
Total revenues	175,848	175,779	69	—	%
Operating expenses:					
Property operating expenses	38,585	41,052	(2,467)	(6.0)	%
Ground rent expenses	2,331	2,331	—	—	%
General and administrative expenses	11,798	10,182	1,616	15.9	%
Observatory expenses	7,250	7,896	(646)	(8.2)	%
Real estate taxes	24,691	23,613	1,078	4.6	%
Acquisition expenses	—	193	(193)	(100.0)	%
Depreciation and amortization	37,607	45,169	(7,562)	(16.7)	%
Total operating expenses	122,262	130,436	(8,174)	(6.3)	%
Operating income	53,586	45,343	8,243	18.2	%
Interest expense	(17,939)	(16,680)	(1,259)	7.5	%
Income before income taxes	35,647	28,663	6,984	24.4	%
Income tax expense	(2,750)	(2,578)	(172)	6.7	%
Net income	32,897	26,085	6,812	26.1	%
Private perpetual preferred unit distributions	(234)	(234)	—	—	%
Net income attributable to non-controlling interests	(16,690)	(14,631)	(2,059)	14.1	%
Net income attributable to common stockholders	\$15,973	\$11,220	\$4,753	42.4	%

## Rental Revenue

The increase in rental income was primarily attributable to increased rental rates.

## Tenant Expense Reimbursement

The decrease in tenant expense reimbursements was due to a decrease in property operating expenses, including lower repairs and maintenance costs and lower utility costs in the three months ended September 30, 2016.

## Observatory Revenue

Observatory revenues were higher primarily due to increased tourist visits and an improvement in our ticket mix versus the prior year period.

**Third-Party Management and Other Fees**

The decrease reflects lower management fee income in the three months ended September 30, 2016 compared to the third quarter 2016.

**Other Revenues and Fees**

The decrease in other revenues and fees was primarily due to a \$2.5 million acquisition break-up fee received in the third quarter 2015.

**Property Operating Expenses**

The decrease in property operating expenses was primarily due to lower repairs and maintenance costs and lower utility costs in the third quarter 2016.

**General and Administrative Expenses**

The increase in general and administrative expenses is due to \$0.8 million related to higher 2016 incentive compensation bonus accruals and salaries and \$1.2 million related to equity compensation expense. We went public in October 2013 and we are still ramping up, adding layers of amortization of non-cash compensation expense associated with equity incentive compensation. Once we conclude four years as a public company, the equity incentive compensation expense should stabilize.

**Observatory Expenses**

The decrease in Observatory expenses primarily reflects lower personnel costs associated with a tenant and onsite ticket reseller whose contract expired in the third quarter 2016. Additionally, the audio tour department was discontinued resulting in lower observatory expenses in the third quarter 2016.

**Real Estate Taxes**

The increase in real estate taxes was primarily due to higher assessed values for several properties.

**Depreciation and Amortization**

The decrease in depreciation and amortization was primarily attributable to assets that became fully depreciated during 2015.

**Interest Expense**

Interest expense increased due to higher interest rates and higher commitment fees due to higher borrowing capacity on the unsecured revolving credit facility in the third quarter 2016 compared to the prior year period.

**Income taxes**

The increase in income tax expense was attributable to activities within our taxable REIT subsidiaries, primarily due to higher Observatory taxable income for the three months ended September 30, 2016.

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Nine Months Ended September 30, 2016 Compared to the Nine Months Ended September 30, 2015

The following table summarizes our historical results of operations for the nine months ended September 30, 2016 and 2015 (dollars in thousands):

	Nine months ended		Change	%	
	2016	2015			
<b>Revenues:</b>					
Rental revenue	\$343,155	\$333,827	\$9,328	2.8	%
Tenant expense reimbursement	56,350	59,878	(3,528)	(5.9)	%
Observatory revenue	91,112	84,525	6,587	7.8	%
Construction revenue	—	1,981	(1,981)	(100.0)	%
Third-party management and other fees	1,372	1,658	(286)	(17.2)	%
Other revenues and fees	6,748	10,565	(3,817)	(36.1)	%
Total revenues	498,737	492,434	6,303	1.3	%
<b>Operating expenses:</b>					
Property operating expenses	115,075	120,341	(5,266)	(4.4)	%
Ground rent expenses	6,994	6,994	—	—	%
General and administrative expenses	35,623	28,395	7,228	25.5	%
Observatory expenses	21,900	23,391	(1,491)	(6.4)	%
Construction expenses	—	3,222	(3,222)	(100.0)	%
Real estate taxes	71,773	69,543	2,230	3.2	%
Acquisition expenses	98	193	(95)	(49.2)	%
Depreciation and amortization	115,382	126,216	(10,834)	(8.6)	%
Total operating expenses	366,845	378,295	(11,450)	(3.0)	%
Operating income	131,892	114,139	17,753	15.6	%
Interest expense	(53,310)	(50,298)	(3,012)	6.0	%
Income before income taxes	78,582	63,841	14,741	23.1	%
Income tax expense	(4,340)	(3,283)	(1,057)	32.2	%
Net income	74,242	60,558	13,684	22.6	%
Private perpetual preferred unit distributions	(702)	(702)	—	—	%
Net income attributable to non-controlling interests	(39,050)	(34,378)	(4,672)	13.6	%
Net income attributable to common stockholders	\$34,490	\$25,478	\$9,012	35.4	%

#### Rental Revenue

The increase in rental income was primarily attributable to increased rental rates.

#### Tenant Expense Reimbursement

The decrease in tenant expense reimbursements was due to a decrease in property operating expenses in the nine months ended September 30, 2016.

#### Observatory Revenue

Observatory revenues were higher in part due to increased tourist visits, more favorable weather conditions in 2016 and changes in ticket mix.

#### Construction Revenue

The construction business ceased operations in 2015 which is reflected in the elimination of construction revenues.



#### Third-Party Management and Other Fees

The decrease reflects lower management fee income in the nine months ended September 30, 2016.

#### Other Revenues and Fees

The decrease was primarily due to a \$2.5 million acquisition break-up fee received in the nine months ended September 30, 2015 and lower lease cancellation income in the nine months ended September 30, 2016.

#### Property Operating Expenses

The decrease in property operating expenses was primarily due to lower repairs and maintenance costs and lower utility costs.

#### General and Administrative Expenses

The increase in general and administrative expenses is due to \$1.7 million of incremental legal costs pertaining to formation transactions litigation, \$3.3 million related to higher 2016 incentive compensation bonus accruals and salaries, and \$2.9 million related to equity compensation expense. We went public in October 2013 and we are still ramping up, adding layers of amortization of non-cash compensation expense associated with equity incentive compensation. Once we conclude four years as a public company, the equity incentive compensation expense should stabilize.

#### Observatory Expenses

The decrease in Observatory expenses primarily reflects lower personnel costs and lower legal fees.

#### Construction Expenses

The construction business ceased operations in 2015 which is reflected in the elimination of construction expenses.

#### Real Estate Taxes

The increase in real estate taxes was primarily due to higher assessed values for several properties.

#### Depreciation and Amortization

The decrease in depreciation and amortization was primarily attributable to assets that became fully depreciated during 2015.

#### Interest Expense

The increase in interest expense was due to higher debt balances as well as higher interest rates. In March 2015, we issued \$350.0 million of senior unsecured notes with a weighted average fixed interest rate of 4.08%. The proceeds were partially used to repay our unsecured revolving credit facility which had a variable interest rate of 1.33% in the first quarter 2015.

#### Income taxes

The increase in income tax expense was attributable to activities within our taxable REIT subsidiaries, primarily due to higher Observatory taxable income for the nine months ended September 30, 2016.

### Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain our assets and operations, including lease-up costs, fund our redevelopment and repositioning programs, acquire properties, make distributions to our securityholders and fulfill other general business needs. Based on the historical experience of our management and our business strategy, in the foreseeable future we anticipate that we will generate positive cash flows from operations. In order to qualify as a REIT, we are required under the Internal Revenue Code of 1986 to distribute to our stockholders, on an annual basis, at least 90% of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gains. We expect to make quarterly distributions to our securityholders.

While we may be able to anticipate and plan for certain liquidity needs, there may be unexpected increases in uses of cash that are beyond our control and which would affect our financial condition and results of operations. For example, we



may be required to comply with new laws or regulations that cause us to incur unanticipated capital expenditures for our properties, thereby increasing our liquidity needs. Even if there are no material changes to our anticipated liquidity requirements, our sources of liquidity may be fewer than, and the funds available from such sources may be less than, anticipated or needed. Our primary sources of liquidity will generally consist of cash on hand and cash generated from our operating activities, mortgage and debt financings and unused borrowing capacity under our unsecured revolving credit facility. We expect to meet our short-term liquidity requirements, including distributions, operating expenses, working capital, debt service, and capital expenditures from cash flows from operations, debt issuances, and available borrowing capacity under our unsecured revolving credit facility. The availability of these borrowings is subject to the conditions set forth in the applicable loan agreements. We expect to meet our long-term capital requirements, including acquisitions, redevelopments and capital expenditures through our cash flows from operations, cash on hand, our unsecured revolving credit facility, mortgage financings, debt issuances, common and/or preferred equity issuances and asset sales. Our properties require periodic investments of capital for individual lease related tenant improvements allowances, general capital improvements and costs associated with capital expenditures. Our overall leverage will depend on our mix of investments and the cost of leverage. Our charter does not restrict the amount of leverage that we may use.

At September 30, 2016, we had approximately \$594.3 million available in cash and cash equivalents, and there was \$1.1 billion available under our unsecured revolving credit facility.

On August 23, 2016, QIA purchased 29,610,854 newly issued Class A common shares at \$21.00 per share, equivalent to a 9.9% economic interest in us on a fully diluted basis (representing a 19.4% ownership of Class A common shares), however, QIA can only vote shares equivalent to 9.9% of all voting securities, with the balance of their shares to be voted by us in accord with the votes of all other voting securities. QIA has a top-up right to maintain their ownership stake at 9.9% over time. We received approximately \$621.8 million in gross proceeds from the sale. Proceeds from the investment were used to pay down the \$45.0 million balance on our revolving credit facility. We intend to use the remaining proceeds for general corporate purposes, including redevelopment of the portfolio and future investments.

In addition, for an initial period of five years from August 23, 2016, QIA will have the right of first offer to co-invest with us as a joint venture partner in real estate investment opportunities initiated by us where we have elected, at our discretion, to seek out a joint venture partner. The right of first offer period will be extended for 30 months so long as at least one joint venture transaction is consummated by us and QIA during the initial term, and will be extended for a further 30 month term if at least one more joint venture transaction is consummated during such initial extension period.

As of September 30, 2016, we had approximately \$1.6 billion of total consolidated indebtedness outstanding, with a weighted average interest rate of 4.15% (excluding premiums and discount) and a weighted average maturity of 4.9 years. Excluding principal amortization, we have no debt maturing in 2016 and approximately \$336.0 million of debt maturing in 2017. Our consolidated net debt to total market capitalization was approximately 14.0% as of September 30, 2016.

#### Unsecured Revolving Credit Facility

On January 23, 2015, we entered into an unsecured revolving credit agreement, which is referred to herein as the “unsecured revolving credit facility,” with Bank of America, Merrill Lynch, Goldman Sachs and the other lenders party thereto. Merrill Lynch acted as joint lead arranger; Bank of America acted as administrative agent; and Goldman Sachs acted as syndication agent and joint lead arranger. Certain of our subsidiaries are guarantors of our obligations under the unsecured revolving credit facility.

The unsecured revolving credit facility is comprised of a revolving credit facility in the maximum original principal amount of \$800.0 million. The unsecured revolving credit facility contains an accordion feature that would allow us to increase the maximum aggregate principal amount to \$1.25 billion under specified circumstances. On July 6, 2016, we

partially exercised the accordion feature and increased our borrowing capacity under the unsecured revolving credit facility from \$800 million to \$1.1 billion. Amounts outstanding under the unsecured revolving credit facility bear interest at a floating rate equal to, at our election, (x) a Eurodollar rate, plus a spread that will range from 0.875% to 1.600% depending upon our leverage ratio and credit rating; or (y) a base rate, plus a spread that will range from 0.000% to 0.600% depending upon our leverage ratio and credit rating. In addition, the unsecured revolving credit facility permits us to borrow at competitive bid rates determined in accordance with procedures described in the unsecured revolving credit facility agreement.

The unsecured revolving credit facility has an initial maturity in January 2019. We have the option to extend the initial term of the unsecured revolving credit facility for up to two additional six-month periods, subject to certain conditions,

including the payment of an extension fee equal to 0.075% of the then outstanding commitments under the unsecured revolving credit facility.

The unsecured revolving credit facility includes the following financial covenants: (i) maximum leverage ratio of total indebtedness to total asset value (as defined in the agreement) of the loan parties and their consolidated subsidiaries will not exceed 60%, (ii) consolidated secured indebtedness will not exceed 40% of total asset value, (iii) tangible net worth will not be less than \$745.4 million plus 75% of net equity proceeds received by the operating partnership (other than proceeds received within ninety (90) days after the redemption, retirement or repurchase of ownership or equity interests in the operating partnership up to the amount paid by the operating partnership in connection with such redemption, retirement or repurchase, where, the net effect is that the operating partnership shall not have increased its net worth as a result of any such proceeds), (iv) adjusted EBITDA (as defined in the unsecured revolving credit facility) to consolidated fixed charges will not be less than 1.50x, (v) the aggregate net operating income with respect to all unencumbered eligible properties to the portion of interest expense attributable to unsecured indebtedness will not be less than 1.75x, (vi) the ratio of total unsecured indebtedness to unencumbered asset value will not exceed 60%, and (vii) consolidated secured recourse indebtedness will not exceed 10% of total asset value (provided, however, this covenant shall not apply at any time after either the company or the operating partnership achieves debt ratings from at least two of Moody's, S&P and Fitch, and such debt ratings are Baa3 or better (in the case of a rating by Moody's) or BBB- or better (in the case of a rating by S&P or Fitch)). As of September 30, 2016, we were in compliance with the covenants (dollars in thousands):

Financial covenant	Required	September 30, 2016	In Compliance
Maximum total leverage	< 60%	27.0	% Yes
Maximum secured debt	< 40%	12.5	% Yes
Minimum fixed charge coverage	> 1.50x	3.3x	Yes
Minimum unencumbered interest coverage	> 1.75x	7.0x	Yes
Maximum unsecured leverage	< 60%	23.6	% Yes
Maximum secured recourse indebtedness	< 10%	0.0	% Yes
Minimum tangible net worth	\$1,203,815	\$1,596,702	Yes

The unsecured revolving credit facility contains customary covenants, including limitations on liens, investment, debt, fundamental changes, and transactions with affiliates, and requires certain customary financial reports.

The unsecured revolving credit facility contains customary events of default (subject in certain cases to specified cure periods), including but not limited to non-payment, breach of covenants, representations or warranties, cross defaults, bankruptcy or other insolvency events, judgments, ERISA events, invalidity of loan documents, loss of real estate investment trust qualification, and occurrence of a change of control (as defined in the agreement for the unsecured credit facility).

#### Senior Unsecured Notes

During March 2015, we issued and sold an aggregate principal amount of \$350.0 million of senior unsecured notes ("Series A, B and C Senior Notes") in a private placement to entities affiliated with Prudential Capital Group. The Series A, B and C Senior Notes consist of \$100 million of 3.93% Series A Senior Notes due 2025, \$125 million of 4.09% Series B Senior Notes due 2027, and \$125 million of 4.18% Series C Senior Notes due 2030. The proceeds were used to repay outstanding mortgage debt, to reduce amounts outstanding under our unsecured revolving credit facility and for other general corporate purposes.

The Series A, B and C Senior Notes are senior unsecured obligations and are unconditionally guaranteed by each of our subsidiaries that guarantees indebtedness under the senior unsecured revolving credit facility. Interest on the Series A, B and C Senior Notes is payable quarterly.

The terms of the Series A, B and C Senior Notes include customary covenants, including limitations on liens, investment, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. The Series A, B and C Senior Notes also require compliance with financial ratios consistent with the unsecured credit facility including a maximum leverage ratio, a maximum secured leverage ratio, a minimum amount of tangible net worth, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, a maximum unsecured leverage ratio and a maximum amount of secured recourse indebtedness. As of September 30, 2016, we were in compliance with the covenants under the Series A, B and C Senior Notes.

#### Unsecured Term Loan Facility

During August 2015, we entered into a new seven year \$265.0 million senior unsecured term loan facility ("term loan facility"). The term loan facility matures on August 24, 2022. The term loan facility bears interest at a floating rate equal to, at our election, a LIBOR rate, plus a spread ranging from 1.400% to 2.350%; or a base rate, plus a spread ranging from 0.400% to 1.350%. In each case the spread is determined by our leverage ratio and credit rating. Pursuant to a forward interest rate swap agreement, we effectively fixed LIBOR at 2.1485% for \$265.0 million of the term loan facility for the period from August 31, 2017 through maturity. The proceeds from the term loan facility were used to repay borrowings made under our unsecured revolving credit facility.

The terms of the term loan facility agreement include customary covenants, including limitations on liens, investment, debt, fundamental changes, and transactions with affiliates and require certain customary financial reports. The term loan facility requires compliance with financial ratios including a maximum leverage ratio, a maximum secured leverage ratio, a minimum amount of tangible net worth, a minimum fixed charge coverage ratio, a minimum unencumbered interest coverage ratio, a maximum unsecured leverage ratio and a maximum amount of secured recourse indebtedness. It also contains customary events of default (subject in certain cases to specified cure periods). These terms in the term loan facility agreement are consistent with the terms in our unsecured revolving credit facility agreement. As of September 30, 2016, we were in compliance with the covenants under the term loan facility.

#### Mortgage Debt

As of September 30, 2016, we had mortgage debt outstanding of \$763.5 million. During the first quarter of 2016, we refinanced at a lower rate a \$20.2 million 6.0% mortgage loan secured by 10 Union Square East. The new \$50.0 million mortgage loan has a ten year maturity and bears interest at a fixed rate of 3.7%. As a result of the refinancing, we expensed \$0.2 million of unamortized deferred financing costs and incurred a \$0.4 million prepayment penalty which will be offset by interest cost savings.

#### Leverage Policies

We expect to employ leverage in our capital structure in amounts determined from time to time by our board of directors. Although our board of directors has not adopted a policy that limits the total amount of indebtedness that we may incur, we anticipate that our board of directors will consider a number of factors in evaluating our level of indebtedness from time to time, as well as the amount of such indebtedness that will be either fixed or floating rate. Our charter and bylaws do not limit the amount or percentage of indebtedness that we may incur nor do they restrict the form in which our indebtedness will be taken (including, but not limited to, recourse or non-recourse debt and cross-collateralized debt). Our overall leverage will depend on our mix of investments and the cost of leverage, however, we currently intend to maintain a level of indebtedness consistent with our plan to seek an investment grade credit rating. Our board of directors may from time to time modify our leverage policies in light of the then-current economic conditions, relative costs of debt and equity capital, market values of our properties, general market conditions for debt and equity securities, fluctuations in the market price of our common stock, growth and acquisition opportunities and other factors.

#### Capital Expenditures

The following tables summarize our tenant improvement costs, leasing commission costs and our capital expenditures for each of the periods presented (dollars in thousands, except per square foot amounts).

#### Office Properties<sup>(1)</sup>





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	Nine months ended September 30,	
	2016	2015
Total New Leases, Expansions, and Renewals		
Number of leases signed <sup>(2)</sup>	130	194
Total square feet	741,843	939,989
Leasing commission costs <sup>(3)</sup>	\$ 13,105	\$ 13,516
Tenant improvement costs <sup>(3)</sup>	44,788	50,342
Total leasing commissions and tenant improvement costs <sup>(3)</sup>	\$ 57,893	\$ 63,858
Leasing commission costs per square foot <sup>(3)</sup>	\$ 17.67	\$ 14.38
Tenant improvement costs per square foot <sup>(3)</sup>	60.37	53.56
Total leasing commissions and tenant improvement costs per square foot <sup>(3)</sup>	\$ 78.04	\$ 67.94
Retail Properties <sup>(4)</sup>		
	Nine months ended September 30,	
	2016	2015
Total New Leases, Expansions, and Renewals		
Number of leases signed <sup>(2)</sup>	13	12
Total square feet	39,183	70,940
Leasing commission costs <sup>(3)</sup>	\$ 2,221	\$ 10,263
Tenant improvement costs <sup>(3)</sup>	4,433	2,234
Total leasing commissions and tenant improvement costs <sup>(3)</sup>	\$ 6,654	\$ 12,497
Leasing commission costs per square foot <sup>(3)</sup>	\$ 56.69	\$ 144.67
Tenant improvement costs per square foot <sup>(3)</sup>	113.13	31.49
	\$ 169.82	\$ 176.16

Total leasing  
commissions and  
tenant improvement  
costs per square  
foot<sup>(3)</sup>

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(1) Excludes an aggregate of 502,429 rentable square feet of retail space in our Manhattan office properties. Includes the Empire State Building broadcasting licenses and observatory operations.

(2) Presents a renewed and expansion lease as one lease signed.

(3) Presents all tenant improvement and leasing commission costs as if they were incurred in the period in which the lease was signed, which may be different than the period in which they were actually paid.

(4) Includes an aggregate of 502,429 rentable square feet of retail space in our Manhattan office properties. Excludes the Empire State Building broadcasting licenses and observatory operations.

Nine months  
ended September  
30,  
2016      2015

Total Portfolio

Capital expenditures <sup>(1)</sup> \$54,975 \$36,718

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Includes all capital expenditures, excluding tenant improvements and leasing commission costs, which are (1) primarily attributable to the redevelopment and repositioning program conducted at our Manhattan office properties.

As of September 30, 2016, we expect to incur additional costs relating to obligations under signed new leases of approximately \$57.1 million, consisting of approximately \$56.5 million for tenant improvements and other improvements related to new leases and approximately \$0.6 million for leasing commissions. We intend to fund the tenant improvements and leasing commission costs through a combination of operating cash flow, cash on hand and borrowings under the unsecured revolving credit facility.

Capital expenditures are considered part of both our short-term and long-term liquidity requirements. We intend to fund the capital improvements to complete the redevelopment and repositioning program through a combination of operating cash flow, cash on hand and borrowings under the unsecured revolving credit facility.

Contractual Obligations

Refer to our Annual Report on Form 10-K for the year ended December 31, 2015 for a discussion of our contractual obligations. There has been no material changes, outside the ordinary course of business, to these contractual obligations during the nine months ended September 30, 2016.

#### Off-Balance Sheet Arrangements

As of September 30, 2016, we did not have any off-balance sheet arrangements.

#### Distribution Policy

In order to qualify as a REIT, we must distribute to our stockholders, on an annual basis, at least 90% of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gains. In addition, we will be subject to U.S. federal income tax at regular corporate rates to the extent that we distribute less than 100% of our net taxable income (including net capital gains) and will be subject to a 4% nondeductible excise tax on the amount, if any, by which our distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws. We intend to distribute our net income to our securityholders in a manner intended to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax liability on our income and the 4% nondeductible excise tax.

Before we pay any distribution, whether for U.S. federal income tax purposes or otherwise, we must first meet both our operating requirements and obligations to make payments of principal and interest, if any. However, under some circumstances, we may be required to use cash reserves, incur debt or liquidate assets at rates or times that we regard as unfavorable or make a taxable distribution of our shares in order to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax in that year.

#### Distributions to Securityholders

Distributions and dividends amounting to \$83.3 million have been made to securityholders for the nine months ended September 30, 2016.

#### Cash Flows

##### Comparison of Nine Months Ended September 30, 2016 to the Nine Months Ended September 30, 2015

Net cash. Cash and cash equivalents were \$594.3 million and \$46.4 million, respectively, as of September 30, 2016 and 2015.

Operating activities. Net cash provided by operating activities increased by \$2.5 million, to \$162.1 million, for the nine months ended September 30, 2016 compared to \$159.6 million for the nine months ended September 30, 2015, primarily due to higher cash rents.

Investing activities. Net cash used in investing activities increased by \$15.3 million, to \$120.3 million, for the nine months ended September 30, 2016 compared to \$105.0 million for the nine months ended September 30, 2015, primarily due to higher expenditures on building and tenant improvements.

Financing activities. Net cash provided by financing activities increased by \$559.8 million, to \$505.8 million, for the nine months ended September 30, 2016 compared to \$54.0 million used in financing activities for the nine months ended September 30, 2015. The increase was from the net proceeds on issuance of common stock in the third quarter 2016.

#### Net Operating Income ("NOI")

Our internal financial reports include a discussion of property net operating income. NOI is a non-GAAP financial measure of performance. NOI is used by our management to evaluate and compare the performance of our properties and to determine trends in earnings and to compute the fair value of our properties as it is not affected by: (i) the cost of funds of the property owner, (ii) the impact of depreciation and amortization expenses as well as gains or losses from the sale of operating real estate assets that are included in net income computed in accordance with GAAP, (iii) acquisition expenses and break-up fee, or (iv) general and administrative expenses and other gains and losses that are specific to the property owner. The cost of funds is eliminated from net operating income because it is specific to the particular financing capabilities and constraints of the owner. The cost of funds is also eliminated because it is dependent on historical interest rates and other costs of capital as well as past decisions made by us regarding the appropriate mix of capital which may have changed or may change in the future. Depreciation and amortization

expenses as well as gains or losses from the sale of operating real estate assets are eliminated because they may not accurately represent the actual change in value in our office

or retail properties that result from use of the properties or changes in market conditions. While certain aspects of real property do decline in value over time in a manner that is reasonably captured by depreciation and amortization, the value of the properties as a whole have historically increased or decreased as a result of changes in overall economic conditions instead of from actual use of the property or the passage of time. Gains and losses from the sale of real property vary from property to property and are affected by market conditions at the time of sale which will usually change from period to period. These gains and losses can create distortions when comparing one period to another or when comparing our operating results to the operating results of other real estate companies that have not made similarly-timed purchases or sales. We believe that eliminating these costs from net income is useful because the resulting measure captures the actual revenue, generated and actual expenses incurred in operating our properties as well as trends in occupancy rates, rental rates and operating costs.

However, the usefulness of NOI is limited because it excludes general and administrative costs, interest expense, depreciation and amortization expense and gains or losses from the sale of properties, and other gains and losses as stipulated by GAAP, the level of capital expenditures and leasing costs necessary to maintain the operating performance of our properties, all of which are significant economic costs. NOI may fail to capture significant trends in these components of net income which further limits its usefulness.

NOI is a measure of the operating performance of our properties but does not measure our performance as a whole. NOI is therefore not a substitute for net income as computed in accordance with GAAP. This measure should be analyzed in conjunction with net income computed in accordance with GAAP and discussions elsewhere in this Management's Discussion and Analysis of Financial Condition and Results of Operations regarding the components of net income that are eliminated in the calculation of NOI. Other companies may use different methods for calculating NOI or similarly titled measures and, accordingly, our NOI may not be comparable to similarly titled measures reported by other companies that do not define the measure exactly as we do.

The following table presents a reconciliation of our net income, the most directly comparable GAAP measure, to NOI for the periods presented (amounts in thousands):

	Three Months Ended		Nine months ended	
	September 30,		September 30,	
	2016	2015	2016	2015
	(unaudited)		(unaudited)	
Net income	\$32,897	\$26,085	\$74,242	\$60,558
Add:				
General and administrative expenses	11,798	10,182	35,623	28,395
Depreciation and amortization	37,607	45,169	115,382	126,216
Interest expense	17,939	16,680	53,310	50,298
Construction expenses	—	—	—	3,222
Acquisition expenses	—	193	98	193
Income tax expense	2,750	2,578	4,340	3,283
Less:				
Construction revenue	—	—	—	(1,981 )
Acquisition break-up fee	—	(2,500 )	—	(2,500 )
Third-party management and other fees	(404 )	(618 )	(1,372 )	(1,658 )
Net operating income	\$102,587	\$97,769	\$281,623	\$266,026
Other Net Operating Income Data				
Straight-line rental revenue	\$9,619	\$5,441	\$21,495	\$15,165
Net increase in rental revenue from the amortization of above- and below-market lease assets and liabilities	\$1,210	\$4,795	\$6,285	\$14,662
Amortization of acquired below-market ground leases	\$1,957	\$1,957	\$5,873	\$5,873



#### Funds from Operations ("FFO")

We present below a discussion of FFO. We compute FFO in accordance with the "White Paper" on FFO published by the National Association of Real Estate Investment Trusts, or NAREIT, which defines FFO as net income (loss) (determined in accordance with GAAP), excluding impairment write-downs of investments in depreciable real estate and investments in in-substance real estate investments, gains or losses from sales of depreciable operating properties, plus real estate-related depreciation and amortization (excluding amortization of deferred financing costs), less distributions to non-controlling interests and gains/losses from discontinued operations and after adjustments for unconsolidated partnerships and joint ventures. FFO is a widely recognized non-GAAP financial measure for REITs that we believe, when considered with financial statements determined in accordance with GAAP, is useful to investors in understanding financial performance and providing a relevant basis for comparison among REITs. In addition, FFO is useful to investors as it captures features particular to real estate performance by recognizing that real estate has generally appreciated over time or maintains residual value to a much greater extent than do other depreciable assets. Investors should review FFO, along with GAAP net income, when trying to understand an equity REIT's operating performance. We present FFO because we consider it an important supplemental measure of our operating performance and believe that it is frequently used by securities analysts, investors and other interested parties in the evaluation of REITs. However, because FFO excludes depreciation and amortization and captures neither the changes in the value of our properties that result from use or market conditions nor the level of capital expenditures and leasing commissions necessary to maintain the operating performance of our properties, all of which have real economic effect and could materially impact our results of operations, the utility of FFO as a measure of performance is limited. There can be no assurance that FFO presented by us is comparable to similarly titled measures of other REITs. FFO does not represent cash generated from operating activities and should not be considered as an alternative to net income (loss) determined in accordance with GAAP or to cash flow from operating activities determined in accordance with GAAP. FFO is not indicative of cash available to fund ongoing cash needs, including the ability to make cash distributions. Although FFO is a measure used for comparability in assessing the performance of REITs, as the NAREIT White Paper only provides guidelines for computing FFO, the computation of FFO may vary from one company to another.

#### Modified Funds From Operations ("Modified FFO")

Modified FFO adds back an adjustment for any above or below-market ground lease amortization to traditionally defined FFO. We consider this a useful supplemental measure in evaluating our operating performance due to the non-cash accounting treatment under GAAP, which stems from the July 2014 acquisition of two properties as they carry significantly below market ground leases, the amortization of which is material to our overall results. We present Modified FFO because we consider it an important supplemental measure of our operating performance in that it adds back the non-cash amortization of below-market ground leases. There can be no assurance that Modified FFO presented by us is comparable to similarly titled measures of other REITs. Modified FFO does not represent cash generated from operating activities and should not be considered as an alternative to net income (loss) determined in accordance with GAAP or to cash flow from operating activities determined in accordance with GAAP. Modified FFO is not indicative of cash available to fund ongoing cash needs, including the ability to make cash distributions.

#### Core Funds From Operations ("Core FFO")

Core FFO adds back to Modified FFO the following items: private perpetual preferred exchange offering expenses, acquisition expenses, gain on settlement of lawsuit related to the Observatory, net of income taxes, deferred financing costs write-offs, prepayment penalties, construction severance expenses and acquisition break-up fee. The Company presents Core FFO because it considers it an important supplemental measure of its operating performance in that it excludes non-recurring items. There can be no assurance that Core FFO presented by the Company is comparable to similarly titled measures of other REITs. Core FFO does not represent cash generated from operating activities and should not be considered as an alternative to net income (loss) determined in accordance with GAAP or to cash flow from operating activities determined in accordance with GAAP. Core FFO is not indicative of cash available to fund

ongoing cash needs, including the ability to make cash distributions. In future periods, we may also exclude other items from Core FFO that we believe may help investors compare our results.

The following table presents a reconciliation of our net income, the most directly comparable GAAP measure, to FFO, Modified FFO and Core FFO for the periods presented (amounts in thousands, except per share amounts):

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	Three Months Ended September 30,		Nine months ended September 30,	
	2016 (unaudited)	2015	2016 (unaudited)	2015
Net income	\$32,897	\$26,085	\$74,242	\$60,558
Private perpetual preferred unit distributions	(234 )	(234 )	(702 )	(702 )
Real estate depreciation and amortization	37,318	45,072	114,779	125,847
FFO attributable to common stockholders and non-controlled interests	69,981	70,923	188,319	185,703
Amortization of below-market ground leases	1,957	1,957	5,873	5,873
Modified FFO attributable to common stockholders and non-controlled interests	71,938	72,880	194,192	191,576
Acquisition break-up fee	—	(2,500 )	—	(2,500 )
Deferred financing costs write-off and prepayment penalty	—	—	552	1,749
Acquisition expenses	—	193	98	193
Construction severance expenses, net of taxes	—	—	—	480
Core FFO attributable to common stockholders and non-controlled interests	\$71,938	\$70,573	\$194,842	\$191,498
Weighted average shares and Operating Partnership Units				
Basic	278,739	265,873	270,388	265,868
Diluted	280,614	265,873	271,028	265,868

## Factors That May Influence Future Results of Operations

## Leasing

We signed 1.2 million rentable square feet of new leases, expansions and lease renewals for the year ended December 31, 2015. During the nine months ended September 30, 2016, we signed 0.8 million rentable square feet of new leases, expansions and renewals.

Due to the relatively small number of leases that are signed in any particular quarter, one or more larger leases may have a disproportionately positive or negative impact on average rent, tenant improvement and leasing commission costs for that period. As a result, we believe it is more appropriate when analyzing trends in average rent and tenant improvement and leasing commission costs to review activity over multiple quarters or years. Tenant improvement costs include expenditures for general improvements occurring concurrently with, but that are not directly related to, the cost of installing a new tenant. Leasing commission costs are similarly subject to significant fluctuations depending upon the length of leases being signed and the mix of tenants from quarter to quarter.

As of September 30, 2016, there were approximately 1.0 million rentable square feet of space in our portfolio available to lease (excluding leases signed but not yet commenced) representing 9.7% of the net rentable square footage of the properties in our portfolio. In addition, leases representing 1.7% and 6.7% of net rentable square footage of the properties in our portfolio will expire in 2016 and in 2017, respectively. These leases are expected to represent approximately 1.8% and 7.0%, respectively, of our annualized rent for such periods. Our revenues and results of operations can be impacted by expiring leases that are not renewed or re-leased or that are renewed or re-leased at base rental rates equal to, above or below the current average base rental rates. Further, our revenues and results of operations can also be affected by the costs we incur to re-lease available space, including payment of leasing commissions, redevelopments and build-to-suit remodeling that may not be borne by the tenant.

We believe that as we complete the redevelopment and repositioning of our properties we will, over the long-term, experience increased occupancy levels and rents. Over the short term, as we renovate and reposition our properties, which

includes aggregating smaller spaces to offer large blocks of space, we may experience lower occupancy levels as a result of having to relocate tenants to alternative space and the strategic expiration of existing leases. We believe that despite the short-term lower occupancy levels we may experience, we will continue to experience increased rental revenues as a result of the increased rents which we expect to obtain following the redevelopment and repositioning of our properties.

#### Observatory and Broadcasting Operations

The Empire State Building Observatory revenue for the third quarter 2016 was \$38.1 million, compared to \$35.7 million for the third quarter 2015. The Observatory hosted approximately 1,340,000 visitors in the third quarter 2016 versus 1,327,000 visitors in the third quarter 2015. In the third quarter 2016, there were ten bad weather days, four of which fell on weekend days, compared to six bad weather days, zero of which fell on weekend days, in the third quarter 2015.

For the nine months ended September 30, 2016, the Empire State Building Observatory hosted 3,183,000 visitors versus 3,114,000 visitors from the same period in 2015. Observatory revenue was \$91.1 million for the nine months ended September 30, 2016, a 7.8% increase from \$84.5 million for the nine months ended September 30, 2015. For the nine months ended September 30, 2016, there were 31 bad weather days, eight of which fell on weekend days, compared to 52 bad weather days, 15 of which fell on weekend days, in the nine months ended September 30, 2015. Observatory revenues and admissions are dependent upon the following: (i) the number of tourists (domestic and international) that come to New York City and visit the observatory, as well as any related tourism trends; (ii) the prices per admission that can be charged; (iii) seasonal trends affecting the number of visitors to the observatory; (iv) competition, in particular from the One World Trade Center and Rockefeller Center observatories; and (v) weather trends.

We license the use of the Empire State Building mast to third party television and radio broadcasters and providers of data communications. We also lease space in the upper floors of the building to such licensees to house their transmission equipment and related facilities. During the nine months ended September 30, 2016, we derived \$16.6 million of revenue and \$6.2 million of expense reimbursements from the Empire State Building's broadcasting licenses and related leases. The broadcasting licenses and related leases generally expire between 2016 and 2031. The business of broadcasting TV and radio signals over the air is in flux, due to deteriorating industry fundamentals and the upcoming Federal Communications Commission spectrum auction, and there is a new competitor in the market at One World Trade Center. We have made preliminary renewal proposals which, if accepted, would yield reduced revenues and higher capital expenditures.

We have renewed and extended our leases and licenses with Univision Television Group from their current expirations in 2016 and 2018 to a new expiration in December 2025. Three of our existing broadcast tenants, CBS Broadcasting, NBC Universal Media, and WNET have notified us that they will vacate the Empire State Building at the end of their current lease terms. The non-renewing leases with CBS, NBC and WNET generated approximately \$6.3 million in aggregate revenue in 2015, inclusive of expense reimbursements, and their leases expire in 2017 and 2018. Revenue from Univision totaled approximately \$2.9 million, inclusive of expense reimbursements in 2015. Effective January 2016, annual revenue from Univision adjusted to an initial amount of \$1.9 million, and is subject to escalations.

We renewed and extended our lease and licenses with Emmis Communications, which operates three FM radio stations at the Empire State Building, for 16 years. For the year ended December 31, 2015, revenue from Emmis Communications totaled approximately \$1.7 million (inclusive of expense reimbursements). Effective January 2016, annual revenue from Emmis Communications adjusted to an initial amount of \$1.3 million, and is subject to escalations.

We have renewed and extended an additional lease and license with a broadcast tenant with terms subject to a confidentiality agreement.

#### Critical Accounting Estimates

There were no material changes to our critical accounting estimates disclosed in our Annual Report on Form 10-K for the year ended December 31, 2015.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our future income, cash flows and fair values relevant to financial instruments are dependent upon prevalent market interest rates. Market risk refers to the risk of loss from adverse changes in market prices and interest rates. One of the principal market risks facing us is interest rate risk on our variable rate indebtedness. As of September 30, 2016, our variable rate debt of \$265.0 million represented 3.3% of our total enterprise value.

Subject to maintaining our qualification as a REIT for U.S. federal income tax purposes, we may mitigate the risk of interest rate volatility through the use of hedging instruments, such as interest rate swap agreements and interest rate cap agreements. Our primary objectives when undertaking hedging transactions and derivative positions will be to reduce our floating rate exposure and to fix a portion of the interest rate for anticipated financing and refinancing transactions. This in turn will reduce the risk that the variability of cash flows will impose on floating rate debt. However, we can provide no assurances that our efforts to manage interest rate volatility will successfully mitigate the risks of such volatility on our portfolio. We are not subject to foreign currency risk.

We are exposed to interest rate changes primarily on our term loan, unsecured revolving credit facility and mortgage refinancing. Our objectives with respect to interest rate risk are to limit the impact of interest rate changes on operations and cash flows, and to lower our overall borrowing costs. To achieve these objectives, we may borrow at fixed rates and may enter into derivative financial instruments such as interest rate swaps or caps in order to mitigate our interest rate risk on a related floating rate financial instrument. We do not enter into derivative or interest rate transactions for speculative purposes.

During 2015 we entered into three interest rate LIBOR swaps with effective dates of July 5, 2017 and August 31, 2017 and an aggregate notional value of \$465.0 million, which fixes interest rates at 2.1485% and 2.5050%, and mature between August 24, 2022 and July 5, 2027. These interest rate swaps have been designated as cash flow hedges and are deemed effective as of September 30, 2016 with a net liability fair value of \$31.2 million which is included in accounts payable and accrued expenses on the condensed consolidated balance sheet.

Based on our variable rate debt balances, interest expense would have increased by approximately \$2.6 million if short-term interest rates had been 1% higher. As of September 30, 2016, the weighted average interest rate on the \$1.4 billion of fixed-rate indebtedness outstanding was 4.55% per annum, each with maturities at various dates through March 27, 2030.

As of September 30, 2016, the fair value of our outstanding debt was approximately \$1.7 billion, which was approximately \$74.9 million more than the historical book value as of such date. Interest risk amounts were determined by considering the impact of hypothetical interest rates on our financial instruments. These analyses do not consider the effect of any change in overall economic activity that could occur in that environment. Further, in the event of a change of that magnitude, we may take actions to further mitigate our exposure to the change. However, due to the uncertainty of the specific actions that would be taken and their possible effects, these analyses assume no changes in our financial structure.

### ITEM 4. CONTROLS AND PROCEDURES

#### Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that information required to be disclosed in our reports under the Exchange Act is processed, recorded, summarized and reported within the time periods specified in the SEC's rules and regulations and that such information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As of September 30, 2016, the end of the period covered by this Report, we carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and Chief Financial Officer, regarding the effectiveness of our disclosure controls and procedures at the end of the period covered by this

Report. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded, as of that time, that our disclosure controls and procedures were effective in ensuring that information required to be disclosed by us in reports filed or submitted under the Exchange Act (i) is processed, recorded, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow for timely decisions regarding required disclosure.

#### Changes in Internal Control over Financial Reporting

No changes to our internal control over financial reporting were identified in connection with the evaluation referenced above that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II. OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

See Note 8 to the Notes to Condensed Consolidated Financial Statements for a description of legal proceedings.

### ITEM 1A. RISK FACTORS

The following updates and supersedes our risk factors set forth in our Annual Report on Form 10-K for the year ended December 31, 2015 (the “2015 Form 10-K”). These supplemental risk factors specifically provide an update in connection with our sale of a 9.9% fully diluted interest in us to QIA in August 2016. For a discussion of our additional risk factors, see Item 1A (Risk Factors) in Part I of the 2015 Form 10-K. Except as disclosed below, there have been no material changes from the risk factors and uncertainties disclosed in our 2015 Annual Report.

Our tax protection agreement with QIA could limit our ability either to sell certain properties or to engage in a strategic transaction, which could materially and adversely affect us.

In connection with our sale of a 9.9% fully diluted interest in us to QIA in August 2016, we agreed, subject to certain minimum thresholds and conditions, to indemnify QIA for certain applicable U.S. federal and state taxes paid by QIA in connection with any dividends we pay that are attributable to capital gains from the sale or exchange of any U.S. real property interests. If we were to trigger our tax indemnification obligations under this agreement, we would be required to pay QIA for the resulting tax consequences, as applicable. Moreover, this obligation may restrict our ability to engage in a strategic transaction, and/or inhibit our selling or disposing of a property that might otherwise be in the best interest of the securityholders to do so.

Our charter contains stock ownership limits, which may delay or prevent a change of control.

In order for us to qualify as a REIT no more than 50% in value of our outstanding capital stock may be owned, directly or indirectly, by five or fewer individuals during the last half of any calendar year, and at least 100 persons must beneficially own our stock during at least 335 days of a taxable year of 12 months, or during a proportionate portion of a shorter taxable year. “Individuals” for this purpose include natural persons, private foundations, some employee benefit plans and trusts and some charitable trusts. To assist us in complying with these limitations, among other purposes, our charter generally prohibits any person from directly or indirectly owning more than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of our capital stock or more than 9.8% in value or number of shares, whichever is more restrictive, of the outstanding shares of our common stock. These ownership limitations could have the effect of discouraging a takeover or other transaction in which holders of our common stock might receive a premium for their shares over the then prevailing market price or which holders might believe to be otherwise in their best interests. We have entered into a waiver of the 9.8% ownership limit with an institutional investor to permit this investor to own up to 15% of the outstanding shares of our Class A common stock, as well as an additional waiver to permit affiliates of QIA to own an aggregate amount of Class A common stock equal to up to a 9.9% fully diluted economic interest in us (inclusive of all outstanding common OP units and LTIP units), which currently equals in excess of 19.4% of our outstanding Class A Common stock.

Our charter’s constructive ownership rules are complex and may cause the outstanding shares owned by a group of related individuals or entities to be deemed to be constructively owned by one individual or entity. As a result, the

acquisition of less than these percentages of the outstanding shares by an individual or entity could cause that individual or entity to own constructively in excess of these percentages of the outstanding shares and thus violate the share ownership limits. Our charter also provides that any attempt to own or transfer shares of our common stock or preferred stock (if and when issued) in excess of the stock ownership limits without the consent of our board of directors or in a manner that would cause us to be “closely held” under Section 856(h) of the Code (without regard to whether the shares are held during the last half of a taxable year) will result in the shares being deemed to be transferred to a trustee for a charitable trust or, if the transfer to the charitable trust is not automatically effective to prevent a violation of the share ownership limits or the restrictions on ownership and transfer of our shares, any such transfer of our shares will be null and void.

The concentration of our voting power may adversely affect the ability of new investors to influence our policies.

As of September 30, 2016, Anthony E. Malkin, our Chairman and Chief Executive Officer, together with the Malkin Group, has the right to vote 42,101,592 shares of our common stock, which represents approximately 20.2% of the voting power of our outstanding common stock. Consequently, Mr. Malkin has the ability to influence the outcome of matters presented to our securityholders, including the election of our board of directors and approval of significant corporate transactions, such as business combinations, consolidations and mergers and the determination of our day-to-day corporate and management policies.

In August 2016, we sold a 9.9% fully diluted interest in us to QIA, which initially represented 19.4% of the outstanding Class A common stock. Pursuant to the terms of our stockholders agreement with QIA, QIA generally has the right (but not the obligation) to maintain its fully diluted economic interest in us by purchasing additional shares of our Class A common stock when we or our operating partnership issue additional common equity securities from time to time. While QIA has agreed to limit its voting power on all matters presented to our securityholders to no more than 9.9% of total number of votes entitled to be cast, QIA has also agreed to vote its shares in favor of the election of all director nominees recommended by our board of directors.

The interests of Mr. Malkin and QIA could conflict with or differ from your interests as a holder of our common stock, and these large securityholders may exercise their right as securityholders to restrict our ability to take certain actions that may otherwise be in the best interests of our securityholders. This concentration of voting power might also have the effect of delaying or preventing a change of control that our securityholders may view as beneficial.

The future exercise of registration rights may adversely affect the market price of our common stock.

We cannot predict whether future issuances of shares of our common stock or operating partnership units or the availability of shares for resale in the open market will decrease the market price per share/unit of our common stock and traded OP units. In August 2016, we entered into a registration rights agreement with QIA in connection with its purchase of 29,610,854 shares of our Class A common stock, which requires us to use commercially reasonable efforts to file with the Securities and Exchange Commission within 180 days following the closing of the sale, a resale shelf registration statement providing for the resale of QIA's shares. Subsequently, QIA will be entitled to cause us to include in the registration statement such additional shares of our Class A common stock as QIA may acquire from time to time, up to a 9.9% fully diluted interest in us. We will bear the costs of registering the securities subject to the registration rights agreement, and once these shares are registered, they will be freely tradable, subject to any applicable lock-up agreements. The registration and availability of such a significant number of securities for trading in the public market may have an adverse effect on the market price of our common stock and could impair our ability to raise additional capital through the sale of equity securities in the future. In particular, QIA currently owns in excess of 19.4% of the outstanding shares of our Class A common stock. If QIA decides to sell all or a substantial portion of its shares, it could have a material adverse impact on the market price of our common stock. In addition, future sales of shares of our common stock may be dilutive to holders of shares of our common stock.

Failure to qualify as a domestically-controlled REIT could subject our non-U.S. securityholders to adverse federal income tax consequences.

A foreign person (other than a "qualified foreign pension plan") disposing of a U.S. real property interest, including shares of a U.S. corporation whose assets consist principally of U.S. property interests, is generally subject to tax under the Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") on the gain recognized on the



disposition. FIRPTA does not apply, however, to the disposition of stock in a REIT if the REIT is a “domestically controlled REIT.” In general, we will be a domestically controlled REIT if at all times during a specified testing period, less than 50% in value of our shares is held directly or indirectly by non-U.S. holders. While we intend to continue to qualify as a "domestically controlled" REIT, we cannot assure that result, as our Class A common stock is publicly traded, QIA (a non-U.S. holder) recently acquired more than 19% of our common stock and other non-U.S. holders may now or in the future hold additional shares. If we were to fail to qualify, gain realized by a foreign investor (other than a “qualified foreign pension plan”) on a sale of our common stock would be subject to FIRPTA unless (a) our common stock was on an established securities market and the foreign investor did not at any time during a specific testing period directly or indirectly own more than 10% of the value of our outstanding common stock, or (b) another exemption from FIRPTA were applicable.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

See our Current Report on Form 8-K filed with the SEC on August 23, 2016.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable

ITEM 5. OTHER INFORMATION

None

ITEM 6. EXHIBITS

The information under the heading "Exhibit Index" below is incorporated herein by reference.

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Exhibit Index

Exhibit No.	Description
1.1	Securities Purchase Agreement dated as of August 23, 2016 by and between Empire State Realty Trust, Inc. and Q REIT Holding LLC, incorporated by reference to Exhibit 1.1 to the Registrant's Form 8-K filed with the SEC on August 23, 2016.
10.1	Stockholders Agreement dated as of August 23, 2016 by and between Empire State Realty Trust, Inc. and Q REIT Holding LLC, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 23, 2016.
10.2	Registration Rights Agreement dated as of August 23, 2016 by and between Empire State Realty Trust, Inc. and Q REIT Holding LLC, incorporated by reference to Exhibit 10.1 to the Registrant's Form 8-K filed with the SEC on August 23, 2016.
31.1*	Certification of Chief Executive Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Rule 13a-14(a)/15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2*	Certification of Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Document
101.DEF*	XBRL Taxonomy Extension Definitions Document
101.LAB*	XBRL Taxonomy Extension Labels Document
101.PRE*	XBRL Taxonomy Extension Presentation Document

Notes:

\* Filed herewith.