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

FORM 10-Q

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2024**
OR
 TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM _____ TO _____

Commission file number: 001-37949

Innovative Industrial Properties, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or other jurisdiction of incorporation or organization)

81-2963381
(I.R.S. Employer Identification No.)

1389 Center Drive, Suite 200
Park City, UT 84098
(Address of principal executive offices)

(858) 997-3332
(Registrant's telephone number)

Not Applicable

(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

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

Title of each class	Trading Symbols (s)	Name of each exchange on which registered
Common Stock, par value \$0.001 per share	IIPR	New York Stock Exchange
Series A Preferred Stock, par value \$0.001 per share	IIPR-PA	New York Stock Exchange

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

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

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

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
Emerging growth company

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

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

As of November 7, 2024 there were 28,331,833 shares of common stock outstanding.

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

FORM 10-Q – QUARTERLY REPORT

SEPTEMBER 30, 2024

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PART I

ITEM 1. FINANCIAL STATEMENTS

Innovative Industrial Properties, Inc.

**Condensed Consolidated Balance Sheets
(Unaudited)**

(In thousands, except share and per share amounts)

	September 30, 2024	December 31, 2023
Assets		
Real estate, at cost:		
Land	\$ 146,043	\$ 142,524
Buildings and improvements	2,209,720	2,108,218
Construction in progress	59,998	117,773
Total real estate, at cost	2,415,761	2,368,515
Less accumulated depreciation	(253,165)	(202,692)
Net real estate held for investment	2,162,596	2,165,823
Construction Loan receivable	22,000	22,000
Cash and cash equivalents	147,128	140,249
Restricted cash	—	1,450
Investments	25,315	21,948
Right of use office lease asset	1,051	1,355
In-place lease intangible assets, net	7,600	8,245
Other assets, net	29,641	30,020
Total assets	<u>\$ 2,395,331</u>	<u>\$ 2,391,090</u>
Liabilities and stockholders' equity		
Liabilities:		
Exchangeable Senior Notes, net	\$ —	\$ 4,431
Notes due 2026, net	297,503	296,449
Building improvements and construction funding payable	9,204	9,591
Accounts payable and accrued expenses	14,961	11,406
Dividends payable	54,817	51,827
Rent received in advance and tenant security deposits	61,084	59,358
Other liabilities	11,225	5,056
Total liabilities	<u>448,794</u>	<u>438,118</u>
Commitments and contingencies (Notes 6 and 11)		
Stockholders' equity:		
Preferred stock, par value \$0.001 per share, 50,000,000 shares authorized: 9.00% Series A cumulative redeemable preferred stock, liquidation preference of \$25.00 per share, 1,002,673 and 600,000 shares issued and outstanding at September 30, 2024 and December 31, 2023, respectively	23,632	14,009
Common stock, par value \$0.001 per share, 50,000,000 shares authorized: 28,331,833 and 28,140,891 shares issued and outstanding at September 30, 2024 and December 31, 2023, respectively	28	28
Additional paid-in capital	2,119,798	2,095,789
Dividends in excess of earnings	(196,921)	(156,854)
Total stockholders' equity	<u>1,946,537</u>	<u>1,952,972</u>
Total liabilities and stockholders' equity	<u>\$ 2,395,331</u>	<u>\$ 2,391,090</u>

See the accompanying notes to the condensed consolidated financial statements.

Innovative Industrial Properties, Inc.
Condensed Consolidated Statements of Income
(Unaudited)
(In thousands, except share and per share amounts)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenues:				
Rental (including tenant reimbursements)	\$ 76,052	\$ 77,286	\$ 230,219	\$ 228,734
Other	474	540	1,554	1,616
Total revenues	<u>76,526</u>	<u>77,826</u>	<u>231,773</u>	<u>230,350</u>
Expenses:				
Property expenses	7,295	6,318	20,867	17,700
General and administrative expense	9,330	10,981	28,553	31,924
Depreciation and amortization expense	17,944	16,678	52,567	50,096
Total expenses	<u>34,569</u>	<u>33,977</u>	<u>101,987</u>	<u>99,720</u>
Gain (loss) on sale of real estate	—	—	(3,449)	—
Income from operations	41,957	43,849	126,337	130,630
Interest income	2,685	2,075	8,435	6,625
Interest expense	(4,427)	(4,330)	(13,136)	(13,322)
Gain (loss) on exchange of Exchangeable Senior Notes	—	—	—	22
Net income	40,215	41,594	121,636	123,955
Preferred stock dividends	(564)	(338)	(1,240)	(1,014)
Net income attributable to common stockholders	<u>\$ 39,651</u>	<u>\$ 41,256</u>	<u>\$ 120,396</u>	<u>\$ 122,941</u>
Net income attributable to common stockholders per share (Note 8):				
Basic	<u>\$ 1.38</u>	<u>\$ 1.46</u>	<u>\$ 4.21</u>	<u>\$ 4.36</u>
Diluted	<u>\$ 1.37</u>	<u>\$ 1.45</u>	<u>\$ 4.16</u>	<u>\$ 4.32</u>
Weighted-average shares outstanding:				
Basic	28,254,565	27,983,004	28,216,946	27,971,544
Diluted	28,579,687	28,265,605	28,548,050	28,248,054

See accompanying notes to the condensed consolidated financial statements.

Innovative Industrial Properties, Inc.
Condensed Consolidated Statements of Stockholders' Equity
(Unaudited)
(In thousands, except share amounts)

	Three Months Ended September 30, 2024						
	Shares of Series A Preferred Stock	Series A Preferred Stock	Shares of Common Stock	Common Stock	Additional Paid-In Capital	Dividends in Excess of Earnings	Total Stockholders' Equity
Balances at beginning of period	600,000	\$ 14,009	28,331,833	\$ 28	\$ 2,115,482	\$ (182,319)	\$ 1,947,200
Net income	—	—	—	—	—	40,215	40,215
Net proceeds from sale of preferred stock	402,673	9,623	—	—	—	—	9,623
Preferred stock dividends	—	—	—	—	—	(564)	(564)
Common stock dividends	—	—	—	—	—	(54,253)	(54,253)
Stock-based compensation	—	—	—	—	4,316	—	4,316
Balances at end of period	<u>1,002,673</u>	<u>\$ 23,632</u>	<u>28,331,833</u>	<u>\$ 28</u>	<u>\$ 2,119,798</u>	<u>\$ (196,921)</u>	<u>\$ 1,946,537</u>

	Nine Months Ended September 30, 2024						
	Shares of Series A Preferred Stock	Series A Preferred Stock	Shares of Common Stock	Common Stock	Additional Paid-In Capital	Dividends in Excess of Earnings	Total Stockholders' Equity
Balances at beginning of period	600,000	\$ 14,009	28,140,891	\$ 28	\$ 2,095,789	\$ (156,854)	\$ 1,952,972
Net income	—	—	—	—	—	121,636	121,636
Issuance of unvested restricted stock, net of forfeitures	—	—	39,310	—	(750)	—	(750)
Exchange of Exchangeable Senior Notes	—	—	28,408	—	—	—	—
Net proceeds from sale of preferred stock	402,673	9,623	—	—	—	—	9,623
Net proceeds from sale of common stock	—	—	123,224	—	11,757	—	11,757
Preferred stock dividends	—	—	—	—	—	(1,240)	(1,240)
Common stock dividends	—	—	—	—	—	(160,463)	(160,463)
Stock-based compensation	—	—	—	—	13,002	—	13,002
Balances at end of period	<u>1,002,673</u>	<u>\$ 23,632</u>	<u>28,331,833</u>	<u>\$ 28</u>	<u>\$ 2,119,798</u>	<u>\$ (196,921)</u>	<u>\$ 1,946,537</u>

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	Three Months Ended September 30, 2023						
	Shares of Series A Preferred Stock	Series A Preferred Stock	Shares of Common Stock	Common Stock	Additional Paid-In Capital	Dividends in Excess of Earnings	Total Stockholders' Equity
Balances at beginning of period	600,000	\$ 14,009	28,040,054	\$ 28	\$ 2,076,357	\$ (137,174)	\$ 1,953,220
Net income	—	—	—	—	—	41,594	41,594
Issuance of unvested restricted stock, net of forfeitures	—	—	(224)	—	—	—	—
Preferred stock dividends	—	—	—	—	—	(338)	(338)
Common stock dividends	—	—	—	—	—	(50,741)	(50,741)
Stock-based compensation	—	—	—	—	4,934	—	4,934
Balances at end of period	<u>600,000</u>	<u>\$ 14,009</u>	<u>28,039,830</u>	<u>\$ 28</u>	<u>\$ 2,081,291</u>	<u>\$ (146,659)</u>	<u>\$ 1,948,669</u>

	Nine Months Ended September 30, 2023						
	Shares of Series A Preferred Stock	Series A Preferred Stock	Shares of Common Stock	Common Stock	Additional Paid-In Capital	Dividends in Excess of Earnings	Total Stockholders' Equity
Balances at beginning of period	600,000	\$ 14,009	27,972,830	\$ 28	\$ 2,065,248	\$ (117,392)	\$ 1,961,893
Net income	—	—	—	—	—	123,955	123,955
Issuance of unvested restricted stock, net of forfeitures	—	—	34,800	—	(568)	—	(568)
Exchange of Exchangeable Senior Notes	—	—	32,200	—	1,964	—	1,964
Preferred stock dividends	—	—	—	—	—	(1,014)	(1,014)
Common stock dividends	—	—	—	—	—	(152,208)	(152,208)
Stock-based compensation	—	—	—	—	14,647	—	14,647
Balances at end of period	<u>600,000</u>	<u>\$ 14,009</u>	<u>28,039,830</u>	<u>\$ 28</u>	<u>\$ 2,081,291</u>	<u>\$ (146,659)</u>	<u>\$ 1,948,669</u>

See accompanying notes to the condensed consolidated financial statements.

Innovative Industrial Properties, Inc.
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(In thousands)

	For the Nine Months Ended September 30,	
	2024	2023
Cash flows from operating activities		
Net income	\$ 121,636	\$ 123,955
Adjustments to reconcile net income to net cash provided by (used in) operating activities		
Depreciation and amortization	52,567	50,096
Loss (gain) on exchange of Exchangeable Senior Notes	—	(22)
Loss (gain) on sale of real estate	3,449	—
Other non-cash adjustments	79	83
Stock-based compensation	13,002	14,647
Amortization of discounts on investments	(504)	(2,894)
Amortization of debt discount and issuance costs	1,214	1,021
Changes in assets and liabilities		
Other assets, net	(2,800)	(2,905)
Accounts payable, accrued expenses and other liabilities	10,271	5,077
Rent received in advance and tenant security deposits	1,726	404
Net cash provided by (used in) operating activities	<u>200,640</u>	<u>189,462</u>
Cash flows from investing activities		
Purchases of investments in real estate	(13,026)	(34,906)
Proceeds from sale of real estate asset	9,100	—
Funding of draws for improvements and construction	(45,642)	(129,502)
Funding of Construction Loan and other investments	—	(3,535)
Purchases of short-term investments	(45,110)	(91,772)
Maturities of short-term investments	42,247	253,716
Net cash provided by (used in) investing activities	<u>(52,431)</u>	<u>(5,999)</u>
Cash flows from financing activities		
Issuance of common stock, net of offering costs	11,757	—
Issuance of preferred stock, net of offering costs	9,623	—
Principal payment on Exchangeable Senior Notes	(4,436)	—
Payment of deferred financing costs	(261)	—
Dividends paid to common stockholders	(157,699)	(151,969)
Dividends paid to preferred stockholders	(1,014)	(1,014)
Taxes paid related to net share settlement of equity awards	(750)	(568)
Net cash provided by (used in) financing activities	<u>(142,780)</u>	<u>(153,551)</u>
Net increase (decrease) in cash, cash equivalents and restricted cash	5,429	29,912
Cash, cash equivalents and restricted cash, beginning of period	141,699	88,572
Cash, cash equivalents and restricted cash, end of period	<u>\$ 147,128</u>	<u>\$ 118,484</u>
Supplemental disclosure of cash flow information:		
Cash paid during the period for interest, net of interest capitalized	\$ 7,806	\$ 8,253
Supplemental disclosure of non-cash investing and financing activities:		
Accrual for current-period additions to real estate	\$ 8,574	\$ 10,520
Deposits applied for acquisitions	—	250
Accrual for common and preferred stock dividends declared	54,817	51,079
Reclassification from other assets to real estate held for investment	3,152	—
Exchange of Exchangeable Senior Notes for common stock	—	1,964

See accompanying notes to the condensed consolidated financial statements.

Innovative Industrial Properties, Inc.

Notes to the Condensed Consolidated Financial Statements
September 30, 2024
(Unaudited)

1. Organization

As used herein, the terms “we”, “us”, “our” or the “Company” refer to Innovative Industrial Properties, Inc., a Maryland corporation, and any of our subsidiaries, including IIP Operating Partnership, LP, a Delaware limited partnership (our “Operating Partnership”).

We are an internally-managed real estate investment trust (“REIT”) focused on the acquisition, ownership and management of specialized industrial properties leased to experienced, state-licensed operators for their regulated cannabis facilities. We have acquired and intend to continue to acquire our properties through sale-leaseback transactions and third-party purchases. We have leased and expect to continue to lease our properties on a triple-net lease basis, where the tenant is responsible for all aspects of and costs related to the property and its operation during the lease term, including structural repairs, maintenance, real estate taxes and insurance.

We were incorporated in Maryland on June 15, 2016. We conduct our business through a traditional umbrella partnership real estate investment trust, or UPREIT structure, in which our properties are owned by our Operating Partnership, directly or through subsidiaries. We are the sole general partner of our Operating Partnership and own, directly or through subsidiaries, 100% of the limited partnership interests in our Operating Partnership.

2. Summary of Significant Accounting Policies and Procedures and Recent Accounting Pronouncements

Basis of Presentation. The condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. They do not include all of the information and footnotes required by GAAP for complete financial statements.

This interim financial information should be read in conjunction with the audited consolidated financial statements in the Company’s Annual Report on Form 10-K for the year ended December 31, 2023. Any references to square footage or occupancy percentage, and any amounts derived from these values in these notes to the condensed consolidated financial statements, are outside the scope of our independent registered public accounting firm’s review.

Management believes that all adjustments of a normal, recurring nature considered necessary for a fair presentation have been included. This interim financial information does not necessarily represent or indicate what the operating results will be for the year ending December 31, 2024.

Federal Income Taxes. We believe that we have operated our business so as to qualify to be taxed as a REIT for U.S. federal income tax purposes. Under the REIT operating structure, we are permitted to deduct dividends paid to our stockholders in determining our taxable income. Assuming our dividends equal or exceed our taxable net income, we generally will not be required to pay federal corporate income taxes on such income. The income taxes recorded on our condensed consolidated statements of income represent amounts paid for city and state income and franchise taxes and are included in general and administrative expenses in the accompanying condensed consolidated statements of income.

Use of Estimates. The preparation of the condensed consolidated financial statements in conformity with GAAP requires management to make a number of estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the condensed consolidated financial statements and reported amounts of revenues and expenses during the reporting period. Actual results may differ materially from these estimates and assumptions. The most significant estimates and assumptions made include the determination of lease accounting and fair value of acquisition of real estate properties.

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Reportable Segment. We are engaged in the business of providing real estate for the regulated cannabis industry. Our properties are similar in that they are leased to the state-licensed operators on a long-term triple-net basis, consist of improvements that are reusable and have similar economic characteristics. Our chief operating decision maker reviews financial information for our entire consolidated operations when making decisions related to assessing our operating performance. We have aggregated the properties into one reportable segment as the properties share similar long-term economic characteristics and have other similarities, including the fact that they are operated using consistent business strategies. The financial information disclosed herein represents all of the financial information related to our one reportable segment.

Acquisition of Real Estate Properties. Our investment in real estate is recorded at historical cost, less accumulated depreciation. Upon acquisition of a property, the tangible and intangible assets acquired and liabilities assumed are initially measured based upon their relative fair values. We estimate the fair value of land by reviewing comparable sales within the same submarket and/or region. We estimate the fair value of buildings and improvements as if the property was vacant, taking into consideration current replacement costs and other relevant market rate information and may engage third-party valuation specialists. Acquisition costs are capitalized as incurred. All of our acquisitions to date were recorded as asset acquisitions.

The fair value of acquired in-place leases is derived based on our assessment of estimated lost revenue and costs incurred for the period required to lease the “assumed vacant” property to the occupancy level when purchased. The amounts recorded for acquired in-place leases are reflected as in-place lease intangible assets, net on our condensed consolidated balance sheets and are amortized on a straight-line basis as a component of depreciation and amortization expense over the remaining term of the applicable leases.

The fair value of the above-market component of an acquired in-place operating lease is based upon the present value (calculated using a market discount rate) of the difference between (i) the contractual rents to be paid pursuant to the lease over its remaining non-cancellable lease term and (ii) our estimate of the rents that would be paid using fair market rental rates and rent escalations at the date of acquisition measured over the remaining non-cancellable term of the lease. The amount recorded for one above-market operating lease is included in other assets, net on our condensed consolidated balance sheets and is amortized on a straight-line basis as a reduction of rental revenues over the remaining term of the applicable lease.

Certain acquisitions of real estate did not satisfy the requirements for sale-leaseback accounting and therefore as of September 30, 2024 and December 31, 2023, acquisitions of \$16.8 million and \$20.0 million, respectively have been recognized as notes receivable and are included in other assets, net on our condensed consolidated balance sheets. During the three months ended September 30, 2024, a \$3.2 million acquisition of real estate which previously did not satisfy the requirements for sale-leaseback accounting was reclassified to real estate held for investment as the requirements for sale-leaseback accounting were satisfied.

Sale of Real Estate. When a real estate asset is sold, we evaluate the provisions of Accounting Standards Codification (“ASC”) 610-20, *Gains and Losses from the Derecognition of Nonfinancial Assets* (“ASC 610-20”) to determine whether the asset is within the scope of ASC 610-20, including an evaluation of whether the asset being sold is a nonfinancial asset and whether the buyer has gained control of an asset within the scope of ASC 610-20. In assessing whether the buyer has gained control of the asset, we must determine whether the contract criteria in ASC 606, *Revenue from Contracts with Customers (Topic 606)* have been met, including 1) the parties to the contract have approved the contract and the contract has commercial substance, 2) we can identify each party’s rights regarding the asset to be transferred, 3) we can identify the payment terms for the asset to be transferred, and 4) it is probable that we will collect substantially all of the consideration to which we will be entitled in exchange for the asset to be transferred. If all of the contract criteria have been met, the carrying amount of the applicable asset is derecognized with a corresponding gain or loss from the sale recognized in our consolidated statements of income. If the contract criteria are not all met, the asset transferred is not derecognized and we continue to report the asset in our condensed consolidated balance sheet. See Note 6 “Investments in Real Estate - Property Disposition” for further information.

Cost Capitalization and Depreciation. We capitalize costs (including interest) associated with development and redevelopment activities and improvements when we are considered to be the accounting owner of the resulting assets. The development and redevelopment activities may be funded by us pursuant to the lease. We are generally considered the accounting owner for such improvements that are attached to or built into the premises, which are required under the lease to be surrendered to us upon the expiration or earlier termination of the lease. Typically, such improvements include, but are not limited to, ground up development, and enhanced HVAC, plumbing, electrical and other building systems.

Amounts capitalized are depreciated on a straight-line basis over the estimated useful lives determined by management. We depreciate buildings and improvements based on our evaluation of the estimated useful life of each specific asset, not to exceed 40 years. For the three months ended September 30, 2024 and 2023, we recognized depreciation expense of \$17.7 million and \$16.5 million, respectively, and for the nine months ended September 30, 2024 and 2023, we recognized depreciation expense of \$51.9 million and \$49.5 million, respectively. Depreciation expense relating to our real estate held for investment is included in depreciation

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and amortization expense in our condensed consolidated statements of income. We depreciate office equipment and furniture and fixtures on a straight-line basis over the estimated useful lives ranging from three to seven years. We depreciate the leasehold improvements at our corporate office on a straight-line basis over the shorter of the estimated useful lives or the remaining lease term. Depreciation expense relating to our corporate assets is included in general and administrative expense in our condensed consolidated statements of income.

Determining whether expenditures meet the criteria for capitalization and the assignment of depreciable lives requires management to exercise significant judgment. Project costs that are clearly associated with the acquisition and development or redevelopment of a real estate project, for which we are the accounting owner, are capitalized as a cost of that project. Expenditures that meet one or more of the following criteria generally qualify for capitalization:

- the expenditure provides benefit in future periods; and
- the expenditure extends the useful life of the asset beyond our original estimates.

We define redevelopment properties as existing properties for which we expect to spend significant development and construction costs that are not reimbursements to tenants for improvements at the properties. When existing properties are determined to be redevelopment properties, the net carrying value of the buildings and improvements are transferred to construction in progress while the redevelopment activities are in process. Costs capitalized to construction in progress related to redevelopment properties are transferred to buildings and improvements at historical cost of the properties as the redevelopment project or phases of projects are placed in service.

Provision for Impairment. On a quarterly basis, we review current activities and changes in the business conditions of all of our properties prior to and subsequent to the end of each quarter to determine the existence of any triggering events or impairment indicators requiring an impairment analysis. If triggering events or impairment indicators are identified, we review an estimate of the future undiscounted cash flows for the properties.

Long-lived assets are individually evaluated for impairment when conditions exist that may indicate that the carrying amount of a long-lived asset may not be recoverable. The carrying amount of a long-lived asset to be held and used is not recoverable if it exceeds the sum of the undiscounted cash flows expected to result from the use and eventual disposition of the asset. Impairment indicators or triggering events for long-lived assets to be held and used are assessed by project and include significant fluctuations in estimated net operating income, occupancy changes, significant near-term lease expirations, current and historical operating and/or cash flow losses, construction costs, estimated completion dates, rental rates, and other market factors. We assess the expected undiscounted cash flows based upon numerous factors, including, but not limited to, construction costs, available market information, current and historical operating results, known trends, current market/economic conditions that may affect the property, and our assumptions about the use of the asset, including, if necessary, a probability-weighted approach if multiple outcomes are under consideration. Upon determination that an impairment has occurred, a write-down is recognized to reduce the carrying amount to its estimated fair value. We may adjust depreciation of properties that are expected to be disposed of or redeveloped prior to the end of their useful lives. No impairment losses were recognized during the three and nine months ended September 30, 2024 and 2023.

Revenue Recognition. Our leases are triple-net leases, an arrangement under which the tenant maintains the property while paying us rent. We recognize revenue for each of the leases at our properties that are classified as operating leases on a cash basis due to the uncertain regulatory environment in the United States pertaining to the regulated cannabis industry, the limited operating history of certain tenants and the resulting uncertainty of collectability of lease payments from each tenant over the duration of the lease term. Additionally, for operating leases, contractually obligated reimbursements from tenants for recoverable real estate taxes, insurance and operating expenses are included in rental revenues in the period when such costs are incurred and reimbursed by the tenants. Contractually obligated real estate taxes that are paid directly by the tenant to the tax authorities are not reflected in our condensed consolidated financial statements.

For the three and nine months ended September 30, 2024, rental revenue recognized included the application of \$1.4 million and \$2.0 million of security deposits for rent, respectively. For the three and nine months ended September 30, 2023, rental revenue recognized included the application of \$2.2 million and \$8.0 million of security deposits for rent, respectively.

Construction Loan. We executed a construction loan agreement with a developer, pursuant to which we agreed to lend up to \$23.0 million for the development of a regulated cannabis cultivation and processing facility in California (the "Construction Loan"). We have an option to purchase the property, and may execute a negotiated lease with an affiliate of the developer or with another third party, if we determine to exercise our purchase option. The Construction Loan matures on December 31, 2024. As of both September

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30, 2024 and December 31, 2023, we had funded \$22.0 million of the \$23.0 million total commitment. Interest income on the Construction Loan is recognized on a cash basis.

Cash and Cash Equivalents. We consider all highly-liquid investments with original maturities of 90 days or less to be cash equivalents, which is comprised of short-term money market funds, obligations of the U.S. government and certificates of deposit with an original maturity at the time of purchase of less than or equal to 90 days.

Restricted Cash. Restricted cash relates to cash held in escrow accounts for future draws for improvements for tenants in accordance with certain lease agreements.

Investments. Investments consist of short-term obligations of the U.S. government and certificates of deposit with an original maturity at the time of purchase of greater than 90 days. Investments in obligations of the U.S. government are classified as held-to-maturity and stated at amortized cost. Investments in certificates of deposit are classified as held-to-maturity and stated at cost.

Deferred Financing Costs. The deferred financing costs relating to our Notes due 2026 are included as a reduction in the net book value of the related liability on our condensed consolidated balance sheet. These costs are amortized as non-cash interest expense using the effective interest method over the life of the related obligations. Deferred financing costs relating to our Revolving Credit Facility are included in other assets, net in our condensed consolidated balance sheets. These costs are being amortized on a straight-line basis and recognized as non-cash interest expense over the remaining term of the Revolving Credit Facility.

Stock-Based Compensation. Stock-based compensation for equity awards is based on the grant date fair value of the equity awards and is recognized over the requisite service or performance period. If awards are forfeited prior to vesting, we reverse any previously recognized expense related to such awards in the period during which the forfeiture occurs and reclassify any non-forfeitable dividends and dividend equivalents previously paid on these awards from retained earnings to compensation expense. Forfeitures are recognized as incurred. Certain equity awards are subject to vesting based upon the satisfaction of various market conditions. Forfeiture of share awards with market-based restrictions does not result in a reversal of previously recognized share-based compensation expense.

Lease Accounting. We account for our leases under ASC 842, *Leases*, and have elected the practical expedient not to separate certain non-lease components from the lease component if the timing and pattern of transfer are the same for the non-lease component and associated lease component, and the lease component would be classified as an operating lease if accounted for separately. We also elected the short-term lease exception for lessees for leases that are less than 12 months. As lessee, we recognized a liability to account for our future obligations and a corresponding right-of-use asset related to our corporate office lease, which ends in January 2027 and contains annual escalations. We measured the lease liability based on the present value of the future lease payments (excluding the extension option that we are not reasonably certain to exercise), discounted using the estimated incremental borrowing rates of 7.25% and 5.5%, which were the interest rates that we estimated we would have to pay to borrow on a collateralized basis over a similar term for an amount equal to the lease payments at initial commencement in December 2019 and upon an amendment in November 2021, respectively. Subsequently, the lease liability is accreted by applying a discount rate established at the lease commencement date to the lease liability balance as of the beginning of the period and is reduced by the payments made during the period.

The right-of-use asset is measured based on the corresponding lease liability. We did not incur any initial direct leasing costs or exchange any other consideration with the landlord prior to the commencement of the lease. Subsequently, the right-of-use asset is amortized on a straight-line basis during the lease term. In each of the three and nine months ended September 30, 2024 and 2023, we recognized office lease expense of \$0.1 million and \$0.4 million, respectively, which is included in general and administrative expenses in our condensed consolidated statements of income. In each of the nine months ended September 30, 2024 and 2023, amounts paid and classified as operating activities in our condensed consolidated statements of cash flows for the office lease were \$0.4 million.

As lessor, for each of our real estate transactions involving the leaseback of the related property to the seller or affiliates of the seller, we determine whether these transactions qualify as sale and leaseback transactions under the accounting guidance. For these transactions, we consider various inputs and assumptions including, but not necessarily limited to, lease terms, renewal options, discount rates, and other rights and provisions in the purchase and sale agreement, lease and other documentation to determine whether control has been transferred to the Company or remains with the lessee. A transaction involving a sale leaseback will be treated as a purchase of a real estate property if it is considered to transfer control of the underlying asset from the lessee. A lease will be classified as direct-financing if risks and rewards are conveyed without the transfer of control and will be classified as a sales-type lease if control of the underlying asset is transferred to the lessee. Otherwise, the lease is treated as an operating lease. These criteria also include estimates and assumptions regarding the fair value of the leased facilities, minimum lease payments, the economic useful

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life of the facilities, the existence of a purchase option, and certain other terms in the lease agreements. The lease accounting guidance requires accounting for a transaction as a financing in a sale leaseback when the seller-lessee is provided an option to purchase the property from the landlord at the tenant's option. Substantially all of our leases are classified as operating leases.

Lease amendments are evaluated to determine if the modification grants the lessee an additional right-of-use not included in the original lease and if the lease payments increase commensurate with the standalone price of the additional right-of-use, adjusted for the circumstances of the particular contract. If both conditions are present, the lease amendment is accounted for as a new lease that is separate from the original lease. In January 2024, the lease modifications for two of our leases to extend the initial term of each lease changed the lease classification from operating lease to sales-type lease that did not satisfy all the criteria for recognition as a completed sale. Accordingly, we have not derecognized the underlying assets and all lease payments received, as well as any future lease payments, will be recognized as a deposit liability and will be included in other liabilities on our condensed consolidated balance sheet until certain criteria are met. As of September 30, 2024, we have received lease payments of \$4.4 million that have been included in other liabilities on our condensed consolidated balance sheet. The underlying assets' land and building and improvements had a gross carrying value of \$4.1 million and \$28.9 million, respectively, and accumulated depreciation of \$3.3 million as of September 30, 2024.

Our leases generally contain options to extend the lease terms at the prevailing market rate or at the expiring rental rate at the time of expiration. Certain of our leases provide the lessee with a right of first refusal or right of first offer in the event we market the leased property for sale.

Recent Accounting Pronouncements. In November 2023, the Financial Accounting Standards Board issued Accounting Standards Update 2023-07, *Segment Reporting (Topic 280): Improvements to Reportable Segment Disclosures* ("ASU 2023-07"). The amendments in ASU 2023-07 improve reportable segment disclosure requirements, primarily through enhanced disclosures about significant segment expenses, measures of segment profit and loss, and disclosures of how the chief operating decision maker uses the reported measure(s) of a segment's profit or loss in assessing segment performance and deciding how to allocate resources. The amendments are effective for all public entities that are required to report segment information for fiscal years beginning after December 15, 2023 and interim periods beginning after December 15, 2024. ASU 2023-07 also requires a public entity that has a single reportable segment to provide all the disclosures required by the amendments in ASU 2023-07 and all existing segment disclosures in Topic 280. Early adoption is permitted. The amendments should be applied retrospectively to all prior periods presented. The Company is currently evaluating the potential impact that this standard will have on its condensed consolidated financial statements and related disclosures.

Concentration of Credit Risk. As of September 30, 2024, we owned 108 properties located in 19 states and leased to 30 tenants (excluding three non-cannabis tenants at two of our properties). The ability of any of our tenants to honor the terms of their leases is dependent upon the economic, regulatory, competition, natural and social factors affecting the community in which that tenant operates.

The following table sets forth the five tenants in our portfolio that represented the largest percentage of our total rental revenues for the three and nine months ended September 30, 2024 and 2023, including tenant reimbursements:

	For the Three Months Ended	
	September 30, 2024	
	Number of Leases	Percentage of Rental Revenue
PharmaCann Inc. ("PharmaCann")	11	17 %
Ascend Wellness Holdings, Inc. ("Ascend")	4	11 %
Green Thumb Industries, Inc. ("Green Thumb")	3	8 %
Curaleaf Holdings, Inc. ("Curaleaf")	8	7 %
Trulieve Cannabis Corp. ("Trulieve")	6	7 %

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	For the Nine Months Ended September 30, 2024	
	Number of Leases	Percentage of Rental Revenue
PharmaCann	11	17 %
Ascend	4	11 %
Green Thumb	3	8 %
Holistic Industries Inc.	5	8 %
Curaleaf	8	7 %

	For the Three Months Ended September 30, 2023	
	Number of Leases	Percentage of Rental Revenue
PharmaCann	11	15 %
Ascend	4	10 %
Green Thumb	3	8 %
Curaleaf	8	7 %
Trulieve	6	7 %

	For the Nine Months Ended September 30, 2023	
	Number of Leases	Percentage of Rental Revenue
PharmaCann	11	15 %
Ascend	4	10 %
Green Thumb	3	8 %
Curaleaf	8	7 %
SH Parent, Inc. ("Parallel") ⁽¹⁾	4	7 %

(1) We regained possession of two properties previously leased to Parallel in Texas and Pennsylvania in 2023.

In each of the tables above, these leases include leases with affiliates of each entity, for which the entity has provided a corporate guaranty.

As of September 30, 2024 and December 31, 2023, our largest property was located in New York and accounted for 5.5% and 5.4%, respectively, of our net real estate held for investment. No other properties accounted for more than 5% of our net real estate held for investment as of September 30, 2024 and December 31, 2023.

We have deposited cash with financial institutions that are insured by the Federal Deposit Insurance Corporation ("FDIC") up to \$250,000. As of September 30, 2024, we had cash accounts in excess of FDIC insured limits. We have not experienced any losses in such accounts.

3. Common Stock

As of September 30, 2024, the Company was authorized to issue up to 50,000,000 shares of common stock, par value \$0.001 per share, and there were 28,331,833 shares of common stock issued and outstanding.

In May 2024, we terminated the previously existing "at-the-market" offering program (the "Prior ATM Program") and entered into new equity distribution agreements with four sales agents, pursuant to which we may offer and sell from time to time through an "at-the-market" offering program (the "ATM Program"), including on a forward basis, shares of our common stock and 9.00% Series A Cumulative Redeemable Preferred Stock, \$0.001 par value per share (the "Series A Preferred Stock"), up to an aggregate offering price of \$500.0 million. See Note 4 "Preferred Stock" for information regarding the sale of Series A Preferred Stock under the ATM Program.

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During the nine months ended September 30, 2024, we sold 123,224 shares of our common stock pursuant to the Prior ATM Program for net proceeds of \$11.8 million. No shares of common stock were issued pursuant to the Prior ATM Program during the nine months ended September 30, 2023.

During the nine months ended September 30, 2024, we issued 28,408 shares of our common stock related to the exchange premium upon exchange by holders of \$4.3 million of outstanding principal amount of our 3.75% Exchangeable Senior Notes due 2024 (the “Exchangeable Senior Notes”).

During the nine months ended September 30, 2023, we issued 32,200 shares of our common stock upon exchange by holders of \$2.0 million of outstanding principal amount of our Exchangeable Senior Notes.

4. Preferred Stock

As of September 30, 2024, the Company was authorized to issue up to 50,000,000 shares of preferred stock, par value \$0.001 per share, and there were 1,002,673 shares issued and outstanding of Series A Preferred Stock. The Company may, at its option, redeem the Series A Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus all accrued and unpaid dividends on such Series A Preferred Stock up to, but excluding, the redemption date. Holders of the Series A Preferred Stock generally have no voting rights except for limited voting rights if the Company fails to pay dividends for six or more quarterly periods (whether or not consecutive) and in certain other circumstances.

During the nine months ended September 30, 2024, we sold 402,673 shares of our Series A Preferred Stock pursuant to the ATM Program for net proceeds of \$9.6 million.

5. Dividends

The following table describes the dividends declared by the Company during the nine months ended September 30, 2024:

<u>Declaration Date</u>	<u>Security Class</u>	<u>Amount Per Share</u>	<u>Period Covered</u>	<u>Dividend Paid Date</u>	<u>Dividend Amount</u>
March 15, 2024	Common stock	\$ 1.82	January 1, 2024 to March 31, 2024	April 15, 2024	\$ 51,957
March 15, 2024	Series A preferred stock	\$ 0.5625	January 15, 2024 to April 14, 2024	April 15, 2024	\$ 338
June 14, 2024	Common stock	\$ 1.90	April 1, 2024 to June 30, 2024	July 15, 2024	\$ 54,253
June 14, 2024	Series A preferred stock	\$ 0.5625	April 15, 2024 to July 14, 2024	July 15, 2024	\$ 338
September 13, 2024	Common stock	\$ 1.90	July 1, 2024 to September 30, 2024	October 15, 2024	\$ 54,253
September 13, 2024	Series A preferred stock	\$ 0.5625	July 15, 2024 to October 14, 2024	October 15, 2024	\$ 564

(In thousands)

6. Investments in Real Estate

Acquisitions

The Company made the following acquisition during the nine months ended September 30, 2024 (dollars in thousands):

<u>Property</u>	<u>Market</u>	<u>Closing Date</u>	<u>Rentable Square Feet⁽¹⁾</u>	<u>Purchase Price</u>	<u>Transaction Costs</u>	<u>Total</u>
Ocala	Florida	June 7, 2024	145,000	\$ 13,000	\$ 26	\$ 13,026 ⁽²⁾
Total			145,000	\$ 13,000	\$ 26	\$ 13,026⁽³⁾

(1) Includes expected rentable square feet at completion of construction at the property.

(2) The tenant is expected to complete improvements at the property, for which we agreed to provide funding of up to \$30.0 million.

(3) \$2.1 million was allocated to land and \$10.9 million was allocated to building and improvements.

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Acquired In-Place Lease Intangible Assets

In-place lease intangible assets and related accumulated amortization as of September 30, 2024 and December 31, 2023 is as follows (in thousands):

	September 30, 2024	December 31, 2023
In-place lease intangible assets	\$ 9,979	\$ 9,979
Accumulated amortization	(2,379)	(1,734)
In-place lease intangible assets, net	<u>\$ 7,600</u>	<u>\$ 8,245</u>

Amortization of in-place lease intangible assets classified in depreciation and amortization expense in our condensed consolidated statements of income was \$0.2 million in each of the three months ended September 30, 2024 and 2023, and \$0.6 million in each of the nine months ended September 30, 2024 and 2023. The weighted-average remaining amortization period of the acquired in-place leases was 9.0 years, and the estimated annual amortization of the value of the acquired in-place leases as of September 30, 2024 is as follows (in thousands):

Year	Amount
2024 (three months ending December 31)	\$ 215
2025	860
2026	860
2027	860
2028	860
Thereafter	3,945
Total	<u>\$ 7,600</u>

Above-Market Lease

The above-market lease and related accumulated amortization included in other assets, net on our condensed consolidated balance sheets as of September 30, 2024 and December 31, 2023 is as follows (in thousands):

	September 30, 2024	December 31, 2023
Above-market lease	\$ 1,054	\$ 1,054
Accumulated amortization	(256)	(187)
Above-market lease, net	<u>\$ 798</u>	<u>\$ 867</u>

The above-market lease is amortized on a straight-line basis as a reduction to rental revenues over the remaining lease term of 8.7 years. In each of the three and nine months ended September 30, 2024 and 2023, the amortization of the above-market lease was \$23,000 and \$69,000, respectively.

Lease Amendments

In January 2024, we entered into lease amendments with subsidiaries of 4Front Ventures Corp. (“4Front”) at the four properties we lease to them in Illinois, Massachusetts and Washington, extending the term of each lease. The Illinois property, which is under development, has experienced significant delays in construction, primarily relating to completion of required utilities enhancements, which has resulted in an extended delay of the estimated completion of the project. As a result, we amended the Illinois lease to reduce base rent owing for the nine months ending September 30, 2024, defer the payback of the security deposit applicable to the lease (with the security deposit being subject to future pro-rata monthly payback), and increase the base rent for the remainder of the term commencing November 1, 2024.

In February 2024, we amended our lease and development agreement with PharmaCann at one of our New York properties, increasing the construction funding commitment by \$16.0 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property. We also amended the lease to extend the term.

In April 2024, we amended our lease with a subsidiary of Battle Green Holdings LLC at one of our Ohio properties to provide an additional improvement allowance of \$4.5 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

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In April 2024, we amended the lease with a subsidiary of 4Front at one of our Illinois properties to provide an additional improvement allowance of \$1.6 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property and increased the annual base rent escalations for the remainder of the lease term.

New Leases

In January 2024, we executed a new lease with a tenant at one of our retail properties in Michigan.

In March 2024, we executed a new long-term lease with a subsidiary of Gold Flora Corporation (“Gold Flora”) at our property located at 63795 19th Avenue in Palm Springs, California (the “19th Ave. Lease”).

In April 2024, we executed a new long-term lease with Lume Cannabis Co. at our property located at 10070 Harvest Park in Dimondale, Michigan.

In May 2024, we executed a new long-term lease with a subsidiary of Gold Flora at our property located at 19533 McLane Street in Palm Springs, California (the “McLane Lease”).

The commencement date under each of the 19th Ave. Lease and McLane Lease is conditioned upon, among other things, the tenant’s receipt of approvals to conduct cannabis operations by the requisite state and local authorities.

Capitalized Costs

During the nine months ended September 30, 2024, we capitalized costs of \$45.0 million and funded \$45.6 million relating to improvements and construction activities at our properties.

Property Dispositions

In May 2024, we sold our leased property in Los Angeles, California for \$9.1 million (excluding closing costs) to a third-party buyer. Concurrently with the sale, pursuant to a separate agreement previously executed between us and the tenant, the tenant paid us a lease termination fee of \$3.9 million and paid for the closing and other costs incurred by us in connection with the sale of the property. In connection with this sale, during the nine months ended September 30, 2024, we recognized a disposition-contingent lease termination fee of \$3.9 million, which is included in rental revenue (including tenant reimbursements) on our condensed consolidated statements of income, and a loss on sale of real estate of \$3.4 million.

In March 2023, we sold the portfolio of four properties in California previously leased to affiliates of Medical Investor Holdings, LLC (“Vertical”) for \$16.2 million (excluding transaction costs) and provided a secured loan for \$16.1 million to the buyer of the properties. The loan matures on February 29, 2028 with two options to extend the maturity for twelve months, conditional in each instance on the payment of an extension fee and at least \$0.5 million of the principal balance. The loan is interest only and payments are payable monthly in advance. The transaction did not qualify for recognition as a completed sale under GAAP since not all of the criteria were met. Accordingly, we have not derecognized the assets transferred on our condensed consolidated balance sheets. All consideration received, as well as any future payments, from the buyer will be recognized as a deposit liability and will be included in other liabilities on our condensed consolidated balance sheet until such time the criteria for recognition as a sale have been met. As of September 30, 2024, we have received interest payments of \$2.4 million. In addition, as we have not met all of the held-for-sale criteria, land and building and improvements with a gross carrying value of \$3.4 million and \$13.9 million, respectively, and accumulated depreciation of \$1.9 million as of September 30, 2024, remain on the condensed consolidated balance sheet, and the buildings and improvements continue to be depreciated.

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Future Contractual Minimum Rent

Future contractual minimum rent (including base rent and property management fees) to be received on our leases as of September 30, 2024 for future periods is summarized as follows (in thousands):

Year	Contractual Minimum Rent
2024 (three months ending December 31)	\$ 74,500
2025	310,800
2026	322,415
2027	330,720
2028	338,062
Thereafter	3,978,962
Total	\$ 5,355,459

Future contractual minimum rent includes payments to be received on two sales-type leases, which will be recognized as a deposit liability and will be included in other liabilities on our condensed consolidated balance sheet until certain criteria are met (see Note 2 “Lease Accounting” for further details).

7. Debt

Exchangeable Senior Notes

During the nine months ended September 30, 2024, we issued 28,408 shares of our common stock and paid \$4.3 million in cash upon exchange by holders of \$4.3 million principal amount of Exchangeable Senior Notes and paid off the remaining \$0.1 million principal amount at maturity in February 2024, in accordance with terms of the indenture for the Exchangeable Senior Notes.

During the nine months ended September 30, 2023, we issued 32,200 shares of our common stock upon exchanges by holders of \$2.0 million of outstanding principal amount of our Exchangeable Senior Notes. For the nine months ended September 30, 2023, we recognized a gain on the exchange totaling \$22,000, resulting from the difference between the fair value and carrying value of the debt as of the date of the exchange. The issuance of the shares pursuant to the exchanges resulted in a net non-cash increase to our additional paid-in capital account of \$2.0 million for the nine months ended September 30, 2023.

The following table details our interest expense related to the Exchangeable Senior Notes which matured in February 2024 (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Cash coupon	\$ —	\$ 41	\$ 24	\$ 140
Amortization of issuance cost	—	9	5	29
Capitalized interest	—	(2)	(1)	(2)
Total interest expense	<u>\$ —</u>	<u>\$ 48</u>	<u>\$ 28</u>	<u>\$ 167</u>

The following table details the carrying value of our Exchangeable Senior Notes (in thousands):

	September 30, 2024	December 31, 2023
Principal amount	\$ —	\$ 4,436
Unamortized issuance cost	—	(5)
Carrying value	<u>\$ —</u>	<u>\$ 4,431</u>

Accrued interest payable for the Exchangeable Senior Notes as of December 31, 2023 was \$49,000 and was included in accounts payable and accrued expenses on our condensed consolidated balance sheets.

Notes due 2026

In May 2021, our Operating Partnership issued \$300.0 million aggregate principal amount of its 5.50% Senior Notes due 2026 (the “Notes due 2026”). The Notes due 2026 are senior unsecured obligations of our Operating Partnership, are fully and unconditionally guaranteed by us and rank equally in right of payment with all of the Operating Partnership’s future senior unsecured indebtedness. However, the Notes due 2026 are effectively subordinated to any of the Company’s, the Operating Partnership’s and the Operating Partnership’s subsidiaries’ future secured indebtedness to the extent of the value of the assets securing such indebtedness. The Notes due 2026 will pay interest semiannually at a rate of 5.50% per year and will mature on May 25, 2026. The terms of the Notes due 2026 are governed by an indenture dated May 25, 2021, and provide that if the debt rating on the Notes due 2026 is downgraded or withdrawn entirely, interest on the Notes due 2026 will increase to a range of 6.0% to 6.5% based on such debt rating.

In connection with the issuance of the Notes due 2026, we recorded \$6.8 million of issuance costs, which are being amortized using the effective interest method and recognized as non-cash interest expense over the term of the Notes due 2026. The effective interest rate including amortization of issuance costs is 6.03%.

The following table details our interest expense related to the Notes due 2026 (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Cash coupon	\$ 4,125	\$ 4,125	\$ 12,375	\$ 12,375
Amortization of issuance cost	357	335	1,054	992
Capitalized interest	(127)	(178)	(516)	(212)
Total interest expense	<u>\$ 4,355</u>	<u>\$ 4,282</u>	<u>\$ 12,913</u>	<u>\$ 13,155</u>

The following table details the carrying value of our Notes due 2026 (in thousands):

	September 30, 2024	December 31, 2023
Principal amount	\$ 300,000	\$ 300,000
Unamortized issuance cost	(2,497)	(3,551)
Carrying value	<u>\$ 297,503</u>	<u>\$ 296,449</u>

The Operating Partnership may redeem some or all of the Notes due 2026 at its option at any time at the applicable redemption price. If the Notes due 2026 are redeemed prior to February 25, 2026, the redemption price will be equal to 100% of the principal amount of the Notes due 2026 being redeemed, plus a make-whole premium and accrued and unpaid interest thereon to, but excluding, the applicable redemption date. If the Notes due 2026 are redeemed on or after February 25, 2026, the redemption price will be equal to 100% of the principal amount of the Notes due 2026 being redeemed, plus accrued and unpaid interest thereon to, but excluding, the applicable redemption date.

The terms of the indenture for the Notes due 2026 require compliance with various financial covenants, including minimum level of debt service coverage and limits on the amount of total leverage and secured debt maintained by the Operating Partnership. Management believes that it was in compliance with those covenants as of September 30, 2024.

Accrued interest payable for the Notes due 2026 as of September 30, 2024 and December 31, 2023 was \$6.2 million and \$2.1 million, respectively, and is included in accounts payable and accrued expenses on our condensed consolidated balance sheets.

Revolving Credit Facility

In October 2023, our Operating Partnership entered into a loan and security agreement (the “Loan Agreement”) with a federally regulated commercial bank, as lender and as agent for lenders that become party thereto from time to time, which matures on October 23, 2026. The Loan Agreement provides \$50.0 million in aggregate commitments for secured revolving loans (the “Revolving Credit Facility”), the availability of which is based on a borrowing base consisting of real properties owned by subsidiaries (the “Subsidiary Guarantors”) of the Operating Partnership that satisfy eligibility criteria set forth in the Loan Agreement. The obligations of the Operating Partnership under the Loan Agreement are guaranteed by the Company and the Subsidiary Guarantors, and are secured by (i) operating accounts of the Operating Partnership into which lease payments under the real property included in the borrowing base are paid, (ii) the equity interest of the Subsidiary Guarantors, (iii) the real estate included in the borrowing base and the leases and rents thereunder, and (iv) all personal property of the Subsidiary Guarantors. Borrowings under the Revolving Credit Facility bear

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interest at a variable rate based on the greater of the prime rate and an applicable margin based on deposits with the participating bank(s) and a stipulated interest rate. The Revolving Credit Facility is subject to an unused line of credit fee, calculated in accordance with the Loan Agreement. The Loan Agreement is subject to certain liquidity and operating covenants and includes customary representations and warranties, affirmative and negative covenants and events of default. The Loan Agreement also allows the Operating Partnership, subject to the satisfaction of certain conditions, to request additional revolving loan commitments up to a specified amount. There were no amounts outstanding under the Revolving Credit Facility as of September 30, 2024.

In connection with the Revolving Credit Facility, we recorded \$0.8 million of issuance costs, which are being amortized on a straight-line basis and recognized as non-cash interest expense over the term of the Revolving Credit Facility. For the three and nine months ended September 30, 2024, we recognized \$72,000 and \$0.2 million, respectively, of non-cash interest expense related to the Revolving Credit Facility.

The following table summarizes the principal payments on our outstanding indebtedness as of September 30, 2024 (in thousands):

Payments Due by Year	Amount
2024 (three months ending December 31)	\$ —
2025	—
2026	300,000
2027	—
2028	—
Thereafter	—
Total	\$ 300,000

8. Net Income Per Share

Grants of restricted stock and restricted stock units (“RSUs”) of the Company in share-based payment transactions are considered participating securities prior to vesting and, therefore, are considered in computing basic earnings per share under the two-class method. The two-class method is an earnings allocation method for calculating earnings per share when a company’s capital structure includes either two or more classes of common stock or common stock and participating securities. Earnings per basic share under the two-class method is calculated based on dividends declared on common shares and other participating securities (“distributed earnings”) and the rights of participating securities in any undistributed earnings, which represents net income remaining after deduction of dividends accruing during the period. The undistributed earnings are allocated to all outstanding common shares and participating securities based on the relative percentage of each security to the total number of outstanding participating securities. Earnings per basic share represents the summation of the distributed and undistributed earnings per share class divided by the total number of shares.

Through September 30, 2024, all of the Company’s participating securities received dividends or dividend equivalents at an equal dividend rate per share or unit. As a result, distributions to participating securities for the three and nine months ended September 30, 2024 and 2023 have been included in net income attributable to common stockholders to calculate net income per basic and diluted share.

The 12,647 shares necessary to settle the Exchangeable Senior Notes on the if-exchanged method basis were dilutive for the nine months ended September 30, 2024 and were included in the computation of diluted earnings per share. The 75,682 and 83,007 shares necessary to settle the Exchangeable Senior Notes on the if-exchanged method basis were dilutive for the three and nine months ended September 30, 2023, respectively, and were included in the computation of diluted earnings per share.

For the three and nine months ended September 30, 2024, 25,352 shares issuable upon vesting of the performance share units (“PSUs”) granted to certain employees were included in dilutive securities as the performance thresholds for vesting of the PSUs were met as measured as of September 30, 2024. For the three and nine months ended September 30, 2023, the PSUs granted to certain employees were not included in dilutive securities as the performance thresholds for vesting of the PSUs were not met as measured as of September 30, 2023 (see Note 10 “Common Stock Incentive Plan” for further discussion of PSUs).

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Computations of net income per basic and diluted share (in thousands, except share and per share data) were as follows:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Net income	\$ 40,215	\$ 41,594	\$ 121,636	\$ 123,955
Preferred stock dividends	(564)	(338)	(1,240)	(1,014)
Distribution to participating securities	(570)	(372)	(1,684)	(1,106)
Net income attributable to common stockholders used to compute net income per share – basic	39,081	40,884	118,712	121,835
Dilutive effect of Exchangeable Senior Notes	—	50	28	169
Net income attributable to common stockholders used to compute net income per share – diluted	\$ 39,081	\$ 40,934	\$ 118,740	\$ 122,004
Weighted-average common shares outstanding:				
Basic	28,254,565	27,983,004	28,216,946	27,971,544
Restricted stock and RSUs	299,770	206,919	293,105	193,503
PSUs	25,352	—	25,352	—
Dilutive effect of Exchangeable Senior Notes	—	75,682	12,647	83,007
Diluted	28,579,687	28,265,605	28,548,050	28,248,054
Net income attributable to common stockholders per share:				
Basic	\$ 1.38	\$ 1.46	\$ 4.21	\$ 4.36
Diluted	\$ 1.37	\$ 1.45	\$ 4.16	\$ 4.32

9. Fair Value of Financial Instruments

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants on the measurement date. Accounting guidance also establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The standard describes three levels of inputs that may be used to measure fair value:

Level 1—Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.

Level 2—Includes other inputs that are directly or indirectly observable in the marketplace.

Level 3—Unobservable inputs that are supported by little or no market activities, therefore requiring an entity to develop its own assumptions.

The following table presents the carrying value and approximate fair value of financial instruments at September 30, 2024 and December 31, 2023 (in thousands):

	At September 30, 2024		At December 31, 2023	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Investments ⁽¹⁾	\$ 25,315	\$ 25,318	\$ 21,948	\$ 21,951
Investments as cash equivalents ⁽²⁾	\$ 55,104	\$ 54,996	\$ 15,187	\$ 15,029
Exchangeable Senior Notes ⁽³⁾	\$ —	\$ —	\$ 4,431	\$ 7,576
Notes due 2026 ⁽³⁾	\$ 297,503	\$ 292,389	\$ 296,449	\$ 278,325
Construction Loan ⁽⁴⁾	\$ 22,000	\$ 27,844	\$ 22,000	\$ 27,543
Notes receivable ⁽⁵⁾	\$ 16,796	\$ 16,796	\$ 20,028	\$ 20,028

- (1) At September 30, 2024, investments consisting of short-term certificates of deposit with an original maturity at the time of purchase of greater than 90 days and less than one year are classified as held-to-maturity and stated at cost, which approximates fair value, and investments consisting of short-term obligations of the U.S. government with an original maturity at the time of purchase of greater than 90 days and less than one year are classified as held-to-maturity, stated at amortized cost and valued using Level 1 inputs. At December 31, 2023, investments consisting of short-term obligations of the U.S. government with an original maturity at the time of purchase of greater than 90 days and less than one year are classified as held-to-maturity, stated at amortized cost and valued using Level 1 inputs.
- (2) Investments as cash equivalents consisting of obligations of the U.S. government with an original maturity at the time of purchase of 90 days or less are classified as held-to-maturity, stated at amortized cost and valued using Level 1 inputs.

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- (3) The fair value is determined based upon Level 2 inputs as the Exchangeable Senior Notes and Notes due 2026 were not traded in an active market. The Exchangeable Senior Notes matured in February 2024.
- (4) The Construction Loan receivable is categorized as Level 3 and was valued using a yield analysis, which is typically performed for non-credit impaired loans. To determine fair value using a yield analysis, a current price is imputed for the loan based upon an assessment of the expected market yield for a similarly structured loan with a similar level of risk. In the yield analysis, the Company considers the current contractual interest rate, the maturity and other terms of the loan relative to risk of the company and the specific loan. At each of September 30, 2024 and December 31, 2023, the expected market yield used to determine fair value was 16.25%. Changes in market yields may change the fair value of the Construction Loan. Generally, an increase in market yields may result in a decrease in the fair value of the Construction Loan. Due to the inherent uncertainty of determining the fair value of a loan that does not have a readily available market value, the fair value of the Construction Loan may fluctuate from period to period. Additionally, the fair value of the Construction Loan may differ significantly from the value that would have been used had a readily available market existed for such loan and may differ materially from the value that the Company may ultimately realize.
- (5) Notes receivable relate to certain acquisitions of real estate which did not satisfy the requirements for sale-leaseback accounting (see Note 2 “Acquisition of Real Estate Properties” to our condensed consolidated financial statements for more information). The notes receivable are categorized as Level 3 and were also valued using a yield analysis. At September 30, 2024 and December 31, 2023, the weighted average expected market yields used to determine fair values were 19.7% and 17.2%, respectively.

The carrying amounts of cash equivalents, accounts payable, accrued expenses and other liabilities approximate their fair values.

10. Common Stock Incentive Plan

Our board of directors adopted our 2016 Omnibus Incentive Plan (the “2016 Plan”) to enable us to motivate, attract and retain the services of directors, employees and consultants considered essential to our long-term success. The 2016 Plan offers our directors, employees and consultants an opportunity to own our stock or rights that will reflect our growth, development and financial success. Under the terms of the 2016 Plan, the aggregate number of shares of our common stock subject to options, restricted stock, stock appreciation rights, restricted stock units and other awards, will be no more than 1,000,000 shares. Any equity awards that lapse, expire, terminate, are canceled or are forfeited (including forfeitures in connection with satisfaction of tax withholdings obligations of the recipient) are re-credited to the 2016 Plan’s reserve for future issuance. The 2016 Plan automatically terminates on the date which is ten years following the effective date of the 2016 Plan.

A summary of the restricted stock activity under the 2016 Plan and related information for the nine months ended September 30, 2024 is included in the table below:

	Unvested Restricted Stock	Weighted- Average Grant Date Fair Value
Balance at December 31, 2023	56,711	\$ 135.46
Granted	43,566	\$ 91.81
Vested	(13,698)	\$ 126.83
Forfeited ⁽¹⁾	(7,442)	\$ 205.15
Balance at March 31, 2024	79,137	\$ 106.37
Granted	3,186	\$ 113.05
Vested	(5,055)	\$ 71.23
Balance at June 30, 2024 and September 30, 2024	<u>77,268</u>	\$ 108.95

(1) Shares that were forfeited to cover the employees’ tax withholding obligation upon vesting.

The remaining unrecognized compensation cost of \$5.2 million for restricted stock awards is expected to be recognized over a weighted-average amortization period of 1.8 years as of September 30, 2024. The fair value of restricted stock that vested during the nine months ended September 30, 2024 was \$2.6 million.

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The following table summarizes our RSU activity for the nine months ended September 30, 2024. RSUs are issued as part of the Innovative Industrial Properties, Inc. Nonqualified Deferred Compensation Plan (the “Deferred Compensation Plan”), which allows a select group of management and our non-employee directors to defer receiving certain of their cash and equity-based compensation. RSUs are subject to vesting conditions of the Deferred Compensation Plan and have the same economic rights as shares of restricted stock under the 2016 Plan:

	Restricted Stock Units	Weighted-Average Grant Date Fair Value
Balance at December 31, 2023	149,956	\$ 125.34
Granted	69,714	\$ 91.81
Balance at March 31, 2024	219,670	\$ 114.70
Granted	2,832	\$ 113.05
Balance at June 30, 2024 and September 30, 2024	222,502	\$ 114.68

The remaining unrecognized compensation cost of \$8.0 million for RSU awards is expected to be recognized over an amortization period of 1.8 years as of September 30, 2024.

In January 2021 and 2022, we issued 70,795 and 102,641 “target” PSUs, respectively, to a select group of officers, which vest and are settled in shares of common stock based on the Company’s total stockholder return over a performance period beginning on the applicable grant date and ending on December 31, 2023 and 2024, respectively.

Stock-based compensation for market-based PSU awards is based on the grant date fair value of the equity awards and is recognized over the applicable performance period. For the three months ended September 30, 2024 and 2023, we recognized stock-based compensation expense of \$1.7 million and \$2.7 million, respectively, relating to PSU awards. For the nine months ended September 30, 2024 and 2023, we recognized stock-based compensation expense of \$5.0 million and \$8.0 million, respectively, relating to PSU awards. As of September 30, 2024, the remaining unrecognized compensation cost of \$1.7 million relating to PSU awards is expected to be recognized over the remaining performance period of 0.3 years.

The PSUs granted in January 2021 were forfeited in their entirety on December 31, 2023 pursuant to the terms of the agreements, as the PSUs failed to meet the performance threshold for vesting.

11. Commitments and Contingencies

Office Lease. The future contractual lease payments for our office lease and the reconciliation to the office lease liability reflected in other liabilities in our condensed consolidated balance sheet as of September 30, 2024 is presented in the table below (in thousands):

Year	Amount
2024 (three months ending December 31)	\$ 128
2025	526
2026	543
2027	45
2028	—
Total future contractual lease payments	1,242
Effect of discounting	(83)
Office lease liability	\$ 1,159

Improvement Allowances. As of September 30, 2024, we had \$44.2 million of commitments related to improvement allowances, which generally may be requested by the tenants at any time up until a date that is near the expiration of the initial term of the applicable lease.

Construction Commitments. As of September 30, 2024, we had \$1.1 million of commitments related to contracts with vendors for improvements at our properties.

Construction Loan. As of September 30, 2024, we had \$1.0 million of commitments related to our Construction Loan for the development of a regulated cannabis cultivation and processing facility in California.

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Environmental Matters. We follow the policy of monitoring our properties, both targeted acquisition and existing properties, for the presence of hazardous or toxic substances. While there can be no assurance that a material environmental liability does not exist, we are not currently aware of any environmental liabilities that would have a material adverse effect on our financial condition, results of operations and cash flow, or that we believe would require disclosure or the recording of a loss contingency.

Litigation.

Class Action Lawsuit

On April 25, 2022, a federal securities class action lawsuit was filed against the Company and certain of its officers. The case was named *Michael V. Mallozzi, individually and on behalf of others similarly situated v. Innovative Industrial Properties, Inc., Paul Smithers, Catherine Hastings and Andy Bui, Case No. 2-22-cv-02359*, and was filed in the U.S. District Court for the District of New Jersey. The lawsuit was purportedly brought on behalf of purchasers of our common stock and alleges that we and certain of our officers made false or misleading statements regarding our business in violation of Section 10(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), SEC Rule 10b-5, and Section 20(a) of the Exchange Act. According to the filed complaint, the plaintiff is seeking an undetermined amount of damages, interest, attorneys’ fees and costs and other relief on behalf of the putative classes of all persons who acquired shares of the Company’s common stock between May 7, 2020 and April 13, 2022.

On September 29, 2022, an Amended Class Action Complaint was filed under the same Case Number, adding as defendants Alan D. Gold and Benjamin C. Regin, and asserting causes of action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. According to the Amended Class Action Complaint, the plaintiff is seeking an undetermined amount of damages, interest, attorneys’ fees and costs and other relief on behalf of the putative classes of all persons who acquired shares of the Company’s common stock between August 7, 2020 and August 4, 2022. On December 1, 2022, defendants moved to dismiss the Amended Class Action Complaint. On September 19, 2023, the court granted defendants’ motion to dismiss the Amended Class Action Complaint without prejudice.

On October 19, 2023, a Second Amended Class Action Complaint was filed under the same Case Number, and asserted causes of action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. According to the Second Amended Class Action Complaint, the plaintiff is seeking an undetermined amount of damages, interest, attorneys’ fees and costs and other relief on behalf of the putative classes of all persons who acquired shares of the Company’s common stock between August 7, 2020 and August 4, 2022. On December 18, 2023, defendants moved to dismiss the Second Amended Class Action Complaint; on February 1, 2024, plaintiff responded with their opposition to defendants’ motion to dismiss the Second Amended Class Action Complaint; and on March 1, 2024, defendants replied to plaintiff’s response. On September 25, 2024, the court granted defendants’ motion to dismiss the Second Amended Class Action Complaint with prejudice. On September 30, 2024, plaintiff filed a notice of appeal of the court’s dismissal of the Second Amended Class Action Complaint with prejudice.

It is possible that similar lawsuits may yet be filed in the same or other courts that name the same or additional defendants. We intend to defend the lawsuit vigorously. However, at this time, we cannot predict the probable outcome of this action, and, accordingly, no amounts have been accrued in the Company’s condensed consolidated financial statements.

Derivative Action Lawsuits

On July 26, 2022, a derivative action lawsuit was filed against the Company and certain of its officers and directors. The case was named *John Rice, derivatively on behalf of Innovative Industrial Properties, Inc. v. Paul Smithers, Catherine Hastings, Andy Bui, Alan Gold, Gary Kreitzer, Mary Curran, Scott Shoemaker, David Stecher, and Innovative Industrial Properties, Inc., Case Number 24-C-22-003312*, and was filed in the Circuit Court for Baltimore City, Maryland. The lawsuit asserts putative derivative claims for breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, and waste of corporate assets against the directors and certain officers of the Company. The plaintiffs are seeking declaratory relief, direction to reform and improve corporate governance and internal procedures, and an undetermined amount of damages, restitution, interest, and attorneys’ fees and costs. On September 6, 2022, the defendants in this action filed a Consent Motion to Stay the Proceedings, which was granted on October 11, 2022. On September 28, 2022, a second derivative action lawsuit was filed against the Company and certain of its officers and directors. The case was named *Karen Draper, derivatively on behalf of Innovative Industrial Properties, Inc. v. Paul Smithers, Catherine Hastings, Andy Bui, Alan Gold, Gary Kreitzer, Mary Curran, Scott Shoemaker, David Stecher, Defendants, and Innovative Industrial Properties Inc., Nominal Defendant, Case Number 24-C-22-004243*, and filed in the Circuit Court for Baltimore City, Maryland. The lawsuit asserts putative derivative claims for breach of fiduciary duty, and seeks actions to reform and improve the Company, and an undetermined amount of damages, restitution, interest, and attorneys’ fees and costs. On October 19, 2022, the parties to both cases filed a Joint Motion to Consolidate Related Shareholder Derivative Actions and to Appoint Lead and Liaison Counsel for plaintiffs, which was granted on December 19, 2022, along with a stay in the lawsuit pending a ruling on the defendants’

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motion to dismiss the federal class action lawsuit described above. On April 17, 2023, a third derivative action lawsuit was filed against the Company and certain of its officers and directors. The case was named *Ross Weintraub, derivatively on behalf of Innovative Industrial Properties, Inc. v. Alan Gold, Paul Smithers, Catherine Hastings, Ben Regin, Andy Bui, Tracie Hager, Gary Kreitzer, David Stecher, Scott Shoemaker, Mary Curran, and Innovative Industrial Properties, Inc.*, Case Number 1:23-cv-00737-GLR, and filed in the United States District Court for the District of Maryland. The lawsuit asserts putative derivative claims for breach of fiduciary duty and violations of Section 14(a) of the Exchange Act, and seeks an undetermined amount of damages, equitable relief, and attorneys' fees and costs. Defendants in this action filed a Consent Motion to Stay the Proceeding, which was granted on April 17, 2023. On June 5, 2023, a fourth derivative action lawsuit was filed against the Company and certain of its officers and directors. The case was named *Franco DeBlasio, on behalf of Gerich Melenth Nin (GMN) LP, derivatively on behalf of Innovative Industrial Properties, Inc. v. Paul Smithers, Catherine Hastings, Alan D. Gold, Tracie J. Hager, Benjamin C. Regin, Andy Bui, Gary A. Kreitzer, David Stecher, Scott Shoemaker, Mary Curran, and Innovative Industrial Properties, Inc.*, Case Number 1:23-cv-01513-GLR, and filed in the United States District Court for the District of Maryland. On July 19, 2023, the United States Court for the District of Maryland consolidated Case Nos. 1:23-cv-00737-GLR and 1:23-cv-01513-GLR with case number 1:23-cv-00737-GLR as the lead case, and kept the stay in place. The consolidated case remains stayed as Case Number 24-C-22-003312.

On May 9, 2024, a fifth derivative action lawsuit was filed against the Company and certain of its officers and directors. The case was named *Gary A Gedig, derivatively on behalf of Innovative Industrial Properties, Inc. v. Paul Smithers, Catherine Hastings, Ben Regin, Andy Bui, Tracy Hager, Alan Gold, Gary A. Kreitzer, Mary Curran, Scott Shoemaker, M.D., and David Stecher, and Innovative Industrial Properties, Inc.*, Civil No. C-24-CV-24-000130, and filed in the Circuit Court for Baltimore City, Maryland. Plaintiff and defendants in this action filed a Joint Stipulation to Stay the Proceedings, which was granted on September 17, 2024.

The Company intends to vigorously defend each of these lawsuits. However, at this time, the Company cannot predict the probable outcome of these actions, and, accordingly, no amounts have been accrued in the Company's condensed consolidated financial statements.

We may, from time to time, be a party to other legal proceedings, which arise in the ordinary course of our business. Although the results of these proceedings, claims, inquiries, and investigations cannot be predicted with certainty, we do not believe that the final outcome of these matters is reasonably likely to have a material adverse effect on our business, financial condition, or results of operations. Regardless of final outcomes, however, any such proceedings, claims, inquiries, and investigations may nonetheless impose a significant burden on management and employees and may come with significant defense costs or unfavorable preliminary and interim rulings.

12. Subsequent Events

Acquisition

In October 2024, we acquired a 23,000 square foot industrial property in Maryland for \$5.6 million and executed a lease with a subsidiary of Maryland Cultivation and Processing, L.L.C. for the entire property.

Amendment to Loan Agreement to Increase Commitments Under Revolving Credit Facility

In November 2024, our Operating Partnership entered into an amendment to the Loan Agreement, pursuant to which the aggregate commitments under the Revolving Credit Facility were increased from \$50.0 million to \$87.5 million.

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

The following discussion should be read in conjunction with the condensed consolidated financial statements and notes thereto appearing elsewhere in this report. We make statements in this report that are "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. In particular, statements pertaining to our capital resources, portfolio performance and results of operations contain forward-looking statements. Likewise, our statements regarding anticipated growth in our funds from operations and anticipated market and regulatory conditions, our strategic direction, demographics, results of operations, plans and objectives are forward-looking statements. Forward-looking statements involve numerous risks and uncertainties, 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). You can identify forward-looking statements by the use of forward-looking terminology such as "believes," "expects," "may," "will," "should," "seeks," "approximately," "intends," "plans," "estimates" or "anticipates" or the negative of these words and phrases or similar words or phrases. You can also identify forward-looking statements by discussions of strategy, plans or intentions. 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: rates of default on leases for our assets; concentration of our portfolio of assets and limited number of tenants; the estimated growth in and evolving market dynamics of the regulated cannabis market; the demand for regulated cannabis facilities; inflation dynamics; the impact of pandemics on us, our business, our tenants, or the economy generally; war and other hostilities, including the conflicts in Ukraine and Israel; our business and investment strategy; our projected operating results; actions and initiatives of the U.S. or state governments and changes to government policies and the execution and impact of these actions, initiatives and policies, including the fact that cannabis remains illegal under federal law; availability of suitable investment opportunities in the regulated cannabis industry; our understanding of our competition and our potential tenants' alternative financing sources; the expected medical-use or adult-use cannabis legalization in certain states; shifts in public opinion regarding regulated cannabis; the potential impact on us from litigation matters, including rising liability and insurance costs; the additional risks that may be associated with certain of our tenants cultivating, processing and/or dispensing adult-use cannabis in our facilities; the state of the U.S. economy generally or in specific geographic areas; economic trends and economic recoveries; our ability to access equity or debt capital; financing rates for our target assets; our level of indebtedness, which could reduce funds available for other business purposes and reduce our operational flexibility; covenants in our debt instruments, which may limit our flexibility and adversely affect our financial condition; our ability to maintain our investment grade credit rating; changes in the values of our assets; our expected portfolio of assets; our expected investments; interest rate mismatches between our assets and our borrowings used to fund such investments; changes in interest rates and the market value of our assets; the degree to which any interest rate or other hedging strategies may or may not protect us from interest rate volatility; the impact of and changes in governmental regulations, tax law and rates, accounting guidance and similar matters; how and when any forward equity sales may settle; our ability to maintain our qualification as a REIT for U.S. federal income tax purposes; our ability to maintain our exemption from registration under the Investment Company Act of 1940; availability of qualified personnel; and market trends in our industry, interest rates, real estate values, the securities markets or the general economy.

The risks included here are not exhaustive, and additional factors could adversely affect our business and financial performance, including factors and risks included in other sections of this report. In addition, we discussed a number of material risks in our Annual Report on Form 10-K for the year ended December 31, 2023, and in Part II, Item 1A of our Quarterly Report on Form 10-Q for the quarter ended June 30, 2024. Those risks continue to be relevant to our performance and financial condition. Moreover, we operate in a very competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for management to predict all such risk factors, nor can it assess the impact of all such risk factors on our Company's business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Any forward-looking statement made by us speaks only of the date on which we make it. The Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as may be required by law. Stockholders and investors are cautioned not to unduly rely on such forward-looking statements when evaluating the information presented in the Company's filings and reports.

The purpose of this Management's Discussion and Analysis ("MD&A") is to provide an understanding of the Company's consolidated financial condition, results of operations and cash flows. MD&A is provided as a supplement to, and should be read in conjunction with, the Company's condensed consolidated financial statements and accompanying notes.

Overview

As used herein, the terms “we”, “us”, “our” or the “Company” refer to Innovative Industrial Properties, Inc., a Maryland corporation, and any of our subsidiaries, including IIP Operating Partnership, LP, a Delaware limited partnership (the “Operating Partnership”).

We are an internally-managed REIT focused on the acquisition, ownership and management of specialized properties leased to experienced, state-licensed operators for their regulated cannabis facilities. We have leased and expect to continue to lease our properties on a triple-net lease basis, where the tenant is responsible for all aspects of and costs related to the property and its operation during the lease term, including structural repairs, maintenance, real estate taxes and insurance.

We were incorporated in Maryland on June 15, 2016. We conduct our business through a traditional umbrella partnership real estate investment trust, or UPREIT structure, in which our properties are owned by our Operating Partnership, directly or through subsidiaries. We are the sole general partner of our Operating Partnership and own, directly or through subsidiaries, 100% of the limited partnership interests in our Operating Partnership. As of September 30, 2024, we had 22 full-time employees.

As of September 30, 2024, we owned 108 properties comprising 9.0 million square feet (including 618,000 rentable square feet under development/redevelopment) in 19 states. As of September 30, 2024, we had invested \$2.4 billion in the aggregate (consisting of purchase price and funding of draws for construction funding and improvements submitted by tenants, if any, but excluding transaction costs) and had committed an additional \$54.5 million to fund draws to certain tenants and vendors for improvements at our properties. Of the \$54.5 million committed to fund draws to certain tenants and vendors for improvements at our properties, \$9.2 million was incurred but not funded as of September 30, 2024.

Of these 108 properties, we include 105 properties in our operating portfolio, which were 95.7% leased as of September 30, 2024, with a weighted-average remaining lease term of 14.0 years. We do not include in our operating portfolio the following properties (all of which were under development/redevelopment as of September 30, 2024, and together are expected to comprise 491,000 rentable square feet upon completion of development/redevelopment):

- 63795 19th Avenue in Palm Springs, California (pre-leased);
- Inland Center Drive in San Bernardino, California; and
- Leah Avenue in San Marcos, Texas.

Factors Impacting Our Operating Results

Our results of operations are affected by a number of factors and depend on the rental revenues we receive from the properties that we acquire, the timing of lease expirations, general market conditions, the regulatory environment in the regulated cannabis industry, and the competitive environment for real estate assets that support the regulated cannabis industry.

Rental Revenues

We receive income primarily from rental revenues generated by the properties that we acquire. The amount of rental revenues depends upon a number of factors, including:

- our ability to enter into leases with increasing or market value rents for the properties that we acquire; and
- rent collection, which primarily relates to each of our tenant’s financial condition and ability to make rent payments to us on time.

The properties that we acquire consist of real estate assets that support the regulated cannabis industry. Most states where we own properties issue licenses for cannabis operations for a limited period. If one or more of our tenants are unable to renew or otherwise maintain their licenses or other state and local authorizations necessary to continue their cannabis operations, such tenants may default on their lease payments to us. Furthermore, changes in federal law and current favorable state or local laws in the cannabis industry may impair our ability to renew or re-lease properties and the ability of our tenants to fulfill their lease obligations and could materially and adversely affect our ability to maintain or increase rental rates for our properties.

Conditions in Our Markets

Positive or negative changes in regulatory, economic or other conditions, drought, and natural disasters in the markets where we acquire properties may affect our overall financial performance.

The success of our tenants in operating their businesses and their ability to pay rent continues to be significantly influenced by many challenges including the impact of inflation, labor shortages, supply chain constraints on their cost of doing business, and the U.S. consumer financial health. Additionally, market dynamics and the regulatory regime in the states where they operate create challenges that may impact our tenants' businesses and/or decrease future demand for regulated cannabis cultivation and production facilities. The potential impact of current economic challenges on the Company's financial condition, results of operations, and cash flows is subject to change and continues to depend on the extent and duration of these risks and uncertainties. See "—Results of Operations—Comparison of the Three and Nine Months Ended September 30, 2024 and 2023—Rental Revenues" for more information. If these conditions persist or worsen, additional tenants may default on their obligations under our leases with them, and we may be unable to re-lease those properties on favorable terms or at all.

Market Dynamics in Regulated Cannabis State Programs

States vary significantly in their market dynamics, driven by many factors, including, but not limited to, regulatory frameworks, enforcement policies with respect to illicit, unlicensed cannabis operations, taxation and licensing structures. For example, in California, according to Global Go Analytics, the illicit market for cannabis remains a much larger portion of overall sales in the state, and state and local authorities have assessed significant taxes on regulated cannabis products, both of which have had the impact of significantly limiting the growth and profitability for operators in the state's regulated cannabis market.

Many states continue to experience significant declines in unit pricing for regulated cannabis products, with that decline more pronounced in certain states than in others, which compresses operating margins for operators. As a result, certain regulated cannabis operators have announced that they are consolidating operations or shuttering certain operations to reduce costs, which if prolonged, could have a material negative impact on operators' demand for regulated cannabis facilities, including our existing tenants.

Inflation and Supply Chain Constraints

The U.S. economy has experienced a sustained increase in inflation rates in recent years, which we believe is negatively impacting our tenants. This inflation has impacted costs for labor and production inputs for regulated cannabis operators, in addition to increasing costs of construction for development and redevelopment projects. Ongoing labor shortages and global supply chain issues also continue to adversely impact costs and timing for completion of these development and redevelopment projects, which are resulting in cost overruns and delays in commencing operations on certain of our tenants' projects.

Reduced Capital Availability for Tenants and the Company

In recent years, financial markets have been volatile, reflecting heightened geopolitical risks and material tightening of financial conditions, which have contributed to significant declines in capital availability for regulated cannabis operators. As regulated cannabis operators also face significant debt maturities in the next few years, certain operators are expected to face challenges in refinancing or extending those debt maturities.

Capital raising activities by U.S. REITs have also experienced steep declines, including significantly reduced capital availability for our company.

Significant Tenants and Concentrations of Risk

As of September 30, 2024, we owned 108 properties located in 19 states leased to 30 tenants (not including three non-cannabis tenants in two properties). Many of our tenants are tenants at multiple properties. We seek to manage our portfolio-level risk through geographic diversification and by minimizing dependence on any single property or tenant. At September 30, 2024, our largest property was located in New York and accounted for 5.5% of our net real estate held for investment. No other properties accounted for more than 5% of our net real estate held for investment at September 30, 2024. See Note 2 "Concentration of Credit Risk" in the notes to our condensed consolidated financial statements for further information regarding the tenants in our portfolio that represented the largest percentage of our total rental revenues for the three and nine months ended September 30, 2024.

Competitive Environment

We face competition from a diverse mix of market participants, including but not limited to, other companies with similar business models, independent investors, hedge funds, lenders and other real estate investors, as well as potential tenants (cannabis operators themselves), all of whom may compete with us in our efforts to acquire real estate zoned for regulated cannabis operations. Competition from others may diminish our opportunities to acquire a desired property on favorable terms or at all. In addition, this competition may put pressure on us to reduce the rental rates below those that we expect to charge for the properties that we acquire, which would adversely affect our financial results.

Operating Expenses

Our operating expenses include general and administrative expenses, including personnel costs, stock-based compensation, and legal, accounting and other expenses related to corporate governance, public reporting and compliance with the various provisions of U.S. securities laws. Our operating expenses also include costs that we incur for properties that are not leased (or are leased but tenant's rent obligations, including for payment of operating expenses, have not yet commenced), including taxes, insurance, maintenance, security, utilities and other property-specific costs. We generally structure our leases so that the tenant is responsible for taxes, maintenance, insurance and structural repairs with respect to the premises throughout the lease term. Increases or decreases in such operating expenses will impact our overall financial performance.

Our Qualification as a REIT

We have been organized and operate our business so as to qualify to be taxed as a REIT for U.S. federal income tax purposes. Shares of our common stock and Series A Preferred Stock are subject to restrictions on ownership and transfer that are intended, among other purposes, to assist us in qualifying and maintaining our qualification as a REIT. In order for us to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the "Code"), the relevant sections of our charter provide that, subject to certain exceptions, no person or entity may own, or be deemed to own, by virtue of the applicable constructive ownership provisions of the Code, more than 9.8% (in value or number of shares, whichever is more restrictive) of the aggregate of our outstanding shares of stock or Series A Preferred Stock or more than 9.8% (in value or number of shares, whichever is more restrictive) of our outstanding common stock or any class or series of our outstanding preferred stock.

Results of Operations

Investments in Real Estate

See Note 6 “Investment in Real Estate” in the notes to the condensed consolidated financial statements for information regarding our investments in real estate activity and property portfolio activity during the nine months ended September 30, 2024.

Comparison of the Three and Nine Months Ended September 30, 2024 and 2023

The following table sets forth the results of our operations (in thousands):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Revenues:				
Rental (including tenant reimbursements)	\$ 76,052	\$ 77,286	\$ 230,219	\$ 228,734
Other	474	540	1,554	1,616
Total revenues	<u>76,526</u>	<u>77,826</u>	<u>231,773</u>	<u>230,350</u>
Expenses:				
Property expenses	7,295	6,318	20,867	17,700
General and administrative expense	9,330	10,981	28,553	31,924
Depreciation and amortization expense	17,944	16,678	52,567	50,096
Total expenses	<u>34,569</u>	<u>33,977</u>	<u>101,987</u>	<u>99,720</u>
Gain (loss) on sale of real estate	—	—	(3,449)	—
Income from operations	41,957	43,849	126,337	130,630
Interest income	2,685	2,075	8,435	6,625
Interest expense	(4,427)	(4,330)	(13,136)	(13,322)
Gain (loss) on exchange of Exchangeable Senior Notes	—	—	—	22
Net income	<u>40,215</u>	<u>41,594</u>	<u>121,636</u>	<u>123,955</u>
Preferred stock dividends	(564)	(338)	(1,240)	(1,014)
Net income attributable to common stockholders	<u>\$ 39,651</u>	<u>\$ 41,256</u>	<u>\$ 120,396</u>	<u>\$ 122,941</u>

Rental Revenues. Rental revenues for the three months ended September 30, 2024 declined by \$1.2 million, or 2% to \$76.1 million, compared to \$77.3 million for the three months ended September 30, 2023. The decline was primarily driven by a \$3.0 million decline in contractual rent and property management fees received during the three months ended September 30, 2024 related to properties that we regained possession of or sold since June 2023; a decline of \$1.3 million due to rent received but not recognized in rental revenues resulting from the re-classifications of two sales-type leases starting January 1, 2024 (see Note 2 “Lease Accounting” to our condensed consolidated financial statements included in this report for more information); and \$1.3 million of contractually due rent and property management fees that were not collected during the three months ended September 30, 2024. This decline was partially offset by a \$4.6 million increase to contractual rent and property management fees, which was primarily driven by contractual rent escalations, amendments to leases for additional improvement allowances at existing properties that resulted in adjustments to rent, and new leases entered into since June 2023.

For the three months ended September 30, 2024, we applied \$1.4 million of security deposits for payment of rent on properties leased to 4Front Ventures Corp. (“4Front”) (four properties), TILT Holdings Inc. (“TILT”) (one property), and Emerald Growth Holdings LLC (“Emerald Growth”) (one property). We terminated our lease with Temescal Wellness of Massachusetts, LLC at our Massachusetts property and regained possession of the property on September 30, 2024. For the three months ended September 30, 2023, we applied \$2.2 million of security deposits for payment of rent.

Subsequent to September 30, 2024, we applied \$0.9 million in security deposits for the properties leased to 4Front, TILT and Emerald Growth for the payment of rent owing in October 2024, and, including those security deposits applied, we collected \$1.4 million of the contractually due rent and interest of \$2.2 million for the month of October 2024 for 4Front, Emerald Growth, TILT and a secured loan for which we are the lender for a California property portfolio.

Rental revenues for the nine months ended September 30, 2024 increased by \$1.5 million, or 1%, to \$230.2 million, compared to \$228.7 million for the nine months ended September 30, 2023. The increase was primarily driven by a \$15.8 million increase to contractual rent and property management fees due to contractual rent escalations, amendments to leases for additional improvement

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allowances at existing properties that resulted in adjustments to rent, and new leases entered into since December 2022; and a \$3.9 million disposition-contingent lease termination fee that was received in connection with the sale of our property in Los Angeles, California. The increase was partially offset by a \$12.8 million decline in contractual rent and property management fees received during the nine months ended September 30, 2024 primarily related to properties that we regained possession of since December 2022; a decline of \$3.9 million due to rent received but not recognized in rental revenues resulting from the re-classifications of two sales-type leases starting January 1, 2024 (see Note 2 “Lease Accounting” to our condensed consolidated financial statements included in this report for more information); and \$1.6 million of contractually due rent and property management fees that were not collected.

For the nine months ended September 30, 2024 and 2023, we applied \$2.0 million and \$8.0 million of security deposits for payment of rent, respectively.

While we have re-leased several properties that we regained possession of since March 2023, rent commencement on certain of these properties is contingent on the tenants obtaining the requisite approvals to operate. We have also granted temporary rent abatements in certain instances as tenants transition into the properties and commence operations. As a result, we do not expect to recognize rental revenue from those properties until such events have occurred.

Other Revenues. Other revenues for the three and nine months ended September 30, 2024 and 2023 consisted of interest revenue related to leases for property acquisitions that did not satisfy the requirements for sale-leaseback accounting.

Property Expenses. Property expenses for the three months ended September 30, 2024 increased by \$1.0 million to \$7.3 million, compared to \$6.3 million for the three months ended September 30, 2023. Property expenses for the nine months ended September 30, 2024 increased by \$3.2 million to \$20.9 million, compared to \$17.7 million for the nine months ended September 30, 2023. The increase in both periods was primarily due to additional investment in existing properties, which resulted in higher property tax that we paid for our properties, as well as higher property expenses related to properties that we have regained possession of but not yet leased. Property expenses related to leased properties are generally reimbursable to us by the tenants under the terms of the leases.

General and Administrative Expense. General and administrative expense for the three months ended September 30, 2024 decreased by \$1.7 million to \$9.3 million, compared to \$11.0 million for the three months ended September 30, 2023. General and administrative expense for the nine months ended September 30, 2024 decreased by \$3.3 million to \$28.6 million, compared to \$31.9 million for the nine months ended September 30, 2023. The decrease in general and administrative expense for each period was primarily due to lower litigation-related expense incurred and lower compensation to employees compared to the prior year periods. The lower compensation was primarily due to the expiration of the PSUs granted in 2021 on December 31, 2023 (which were forfeited in their entirety as they failed to meet the threshold for any payout as of that date), which was partially offset by increases to payroll salary, bonus expense and non-PSU related stock-based compensation for employees and directors. Compensation expense for the three and nine months ended September 30, 2024 included \$4.3 million and \$13.0 million, respectively, of non-cash stock-based compensation. Compensation expense for the three and nine months ended September 30, 2023 included \$4.9 million and \$14.6 million, respectively, of non-cash stock-based compensation.

Depreciation and Amortization Expense. Depreciation and amortization expense for the three months ended September 30, 2024 increased \$1.2 million to \$17.9 million, compared to \$16.7 million for the three months ended September 30, 2023. Depreciation and amortization expense for the nine months ended September 30, 2024 increased by \$2.5 million to \$52.6 million, compared to \$50.1 million for the nine months ended September 30, 2023. The increase in depreciation and amortization expense was primarily related to depreciation for properties that we acquired in 2023, one property we acquired in June 2024 and the placement into service of construction and improvements at certain of our properties.

Loss on Sale of Real Estate. Amount relates to the sale of property in Los Angeles, California in May 2024 (see Note 6 “Investments in Real Estate” to our condensed consolidated financial statements included in this report for more information).

Interest Income. Interest income for the three months ended September 30, 2024 increased by \$0.6 million to \$2.7 million, compared to \$2.1 million for the three months ended September 30, 2023. Interest income for the nine months ended September 30, 2024 increased by \$1.8 million to \$8.4 million, compared to \$6.6 million for the nine months ended September 30, 2023. The increase in both periods was primarily due to cash interest received on our construction loan pursuant to which we agreed to lend up to \$23.0 million, for the development of a regulated cannabis cultivation and processing facility in California (the “Construction Loan”). Cash interest received on our Construction Loan was \$1.1 million and \$3.2 million during the three and nine months ended September 30, 2024, respectively, versus \$0.4 million and \$1.0 million during the three and nine months ended September 30, 2023. Cash interest received on our Construction Loan included a loan maturity extension fee paid to us of \$0.3 million during the nine months ended September 30, 2024.

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Interest Expense. Interest expense primarily consists of interest on our Notes due 2026. Interest expense for the three months ended September 30, 2024 increased by \$0.1 million to \$4.4 million, compared to \$4.3 million for the three months ended September 30, 2023, which was primarily due to non-cash interest expense related to the Revolving Credit Facility. Interest expense for the nine months ended September 30, 2024 decreased by \$0.2 million to \$13.1 million, compared to \$13.3 million for the nine months ended September 30, 2023, which was primarily due to higher capitalization of interest and the maturity of the Exchangeable Senior Notes in February 2024.

Cash Flows

Comparison of the Nine Months Ended September 30, 2024 and 2023 (in thousands)

	Nine Months Ended September 30,		Change
	2024	2023	
Net cash provided by (used in) operating activities	\$ 200,640	\$ 189,462	\$ 11,178
Net cash provided by (used in) investing activities	(52,431)	(5,999)	(46,432)
Net cash provided by (used in) financing activities	(142,780)	(153,551)	10,771
Ending cash, cash equivalents and restricted cash	147,128	118,484	28,644

Operating Activities

Cash flows provided by operating activities for the nine months ended September 30, 2024 and 2023 were \$200.6 million and \$189.5 million, respectively. Cash flows provided by operating activities were generally from contractual rent and tenant reimbursements from our properties, partially offset by our general and administrative expense, interest expense, property expenses in excess of tenant reimbursements and property expenses at properties that were not leased. The increase in cash flows provided by operating activities for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 was primarily due to the \$3.9 million disposition-contingent lease termination fee that was received concurrently with the sale of our property in Los Angeles, California, higher contractual rent collection (including deferred lease payments received on sales-type leases), proceeds from property insurance claims, higher interest income and changes in working capital due to timing of vendor payments.

Investing Activities

Cash flows used in investing activities for the nine months ended September 30, 2024 were \$52.4 million, of which \$58.7 million was related to investments in real estate and funding of draws for improvement and construction funding at our properties, \$2.8 million was related to net purchases and maturities of short-term investments, partially offset by \$9.1 million in proceeds related to the sale of our Los Angeles, California property. Cash flows used in investing activities for the nine months ended September 30, 2023 were \$6.0 million, of which \$167.9 million was related to investments in real estate and funding of draws for improvement and construction funding at our properties and other investments, partially offset by \$161.9 million related to net purchases and maturities of short-term investments.

Financing Activities

Net cash used in financing activities of \$142.8 million during the nine months ended September 30, 2024 was the result of dividend payments of \$158.7 million to common and preferred stockholders, principal payment on the Exchangeable Senior Notes of \$4.4 million, and \$1.1 million related to net share settlement of equity awards to pay the required withholding taxes upon vesting of restricted stock for certain employees and payment of deferred financing costs, partially offset by \$11.8 million in net proceeds from the issuance of our common stock and \$9.6 million in net proceeds from the issuance of our Series A Preferred Stock pursuant to our ATM Program.

Net cash used in financing activities of \$153.6 million during the nine months ended September 30, 2023 was the result of dividend payments of \$153.0 million to common and preferred stockholders and \$0.6 million related to net share settlement of equity awards to pay the required withholding taxes upon vesting of restricted stock for certain employees.

Liquidity and Capital Resources

Sources and Uses of Cash

Liquidity is a measure of our ability to meet potential cash requirements. We derive substantially all of our revenues from the leasing of our properties and collecting rental income, which includes operating expense reimbursements, based on contractual arrangements with our tenants. This source of revenue represents our primary source of liquidity to fund the acquisition of additional properties, the development and redevelopment of existing properties, dividends to our stockholders, obligations under our Notes due 2026, repayment of borrowings and interest payments under our Revolving Credit Facility, general and administrative expenses, property development and redevelopment activities, property operating expenses and other expenses incurred related to managing our existing portfolio and investing in additional properties. Because substantially all of our leases are triple net, our tenants are generally responsible for the maintenance, insurance and property taxes associated with the properties they lease from us. If a tenant defaults on one of our leases or the lease term expires with no tenant renewal, we would incur property costs not paid by the tenant during the time it takes to re-lease or sell the property.

As of September 30, 2024, we owned 108 properties. Of these properties, the 105 properties in our operating portfolio were 95.7% leased, with a weighted-average remaining lease term of 14.0 years.

We expect to incur some property-level operating costs from time to time in periods during which properties that become vacant are being remarketed or re-positioned. In addition, we may recognize an expense for certain property costs, such as insurance premiums and real estate taxes billed in arrears, if we believe the tenant is likely to vacate the property before making payment on those obligations or may be unable to pay such costs in a timely manner. Property costs are generally not significant to our operations, but the amount of property costs can vary quarter to quarter based on the number of property vacancies and whether we have any underperforming properties. We may advance certain property costs on behalf of our tenants but expect that the majority of these costs will be reimbursed by the tenant and do not anticipate that they will be significant to our operations. In addition, for properties that are not leased and are under development or redevelopment, we may make significant additional investments in these properties in order to get them ready for their intended use and to re-lease them. For the three and nine months ended September 30, 2024, property expenses included \$0.9 million and \$2.6 million, respectively, of non-reimbursed expenses related to operating properties that were not leased.

To the extent additional resources are needed, we expect to fund our investment activity generally through equity or debt issuances either in the public or private markets along with draws on our Revolving Credit Facility. Where possible, we also may issue limited partnership interests in our Operating Partnership to acquire properties from existing owners seeking a tax-deferred transaction.

In May 2021, we received an investment grade rating from a ratings agency. We sought to obtain an investment grade rating to facilitate access to the investment grade unsecured debt market as part of our overall strategy to maximize our financial flexibility and manage our overall cost of capital. In May 2021, our Operating Partnership issued \$300.0 million aggregate principal amount of Notes due 2026. The Notes due 2026 are the Operating Partnership's general unsecured and unsubordinated obligations, are fully and unconditionally guaranteed by us, and rank equally in right of payment with all of the Operating Partnership's future senior unsecured indebtedness. The terms of the Notes due 2026 are governed by an indenture, which requires compliance with various financial covenants including limits on the amount of total leverage and secured debt maintained by the Operating Partnership and which require the Operating Partnership to maintain minimum levels of debt service coverage. Management believes that it was in compliance with those covenants as of September 30, 2024. In addition, the terms of the indenture provide that if the debt rating on the Notes due 2026 is downgraded or withdrawn entirely, interest on the Notes due 2026 will increase to a range of 6.0% to 6.5% based on such debt rating.

In February 2024, we issued 28,408 shares of our common stock and paid \$4.3 million in cash upon exchange by holders of \$4.3 million principal amount of Exchangeable Senior Notes and paid off the remaining \$0.1 million principal amount, in accordance with terms of the indenture for the Exchangeable Senior Notes.

In May 2024, we terminated the previously existing "at-the-market" offering program (the "Prior ATM Program") and entered into new equity distribution agreements with four sales agents, pursuant to which we may offer and sell from time to time through an "at-the-market" offering program (the "ATM Program"), including on a forward basis, shares of our common stock and 9.00% Series A Cumulative Redeemable Preferred Stock, \$0.001 par value per share (the "Series A Preferred Stock"), up to an aggregate offering price of \$500.0 million. During the nine months ended September 30, 2024, we sold 123,224 shares of our common stock pursuant to the Prior ATM Program for net proceeds of \$11.8 million. During the nine months ended September 30, 2024, we sold 402,673 shares of our Series A Preferred Stock pursuant to the ATM Program for net proceeds of \$9.6 million.

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We have filed an automatic shelf registration statement, which may permit us, from time to time, to offer and sell common stock, preferred stock, debt, warrants and other securities to the extent necessary or advisable to meet our liquidity needs.

In October 2023, our Operating Partnership entered into a loan and security agreement (the “Loan Agreement”) with a federally regulated commercial bank, as lender and as agent for lenders that become party thereto from time to time. The Loan Agreement matures on October 23, 2026, and was most recently amended in November 2024 to increase aggregate commitments for secured revolving loans to \$87.5 million (the “Revolving Credit Facility”). The Loan Agreement also allows the Operating Partnership, subject to the satisfaction of certain conditions, to request additional revolving incremental loan commitments up to a specified amount. The Loan Agreement is subject to certain liquidity and operating covenants and includes customary representations and warranties, affirmative and negative covenants and events of default. There were no amounts outstanding under the Loan Agreement as of September 30, 2024.

In May 2024, we sold a property in Los Angeles, California for \$9.1 million (excluding closing costs), received a disposition-contingent lease termination fee from the tenant concurrently with the closing of \$3.9 million and received tenant reimbursement of our closing and other costs related to the sale of the property.

We expect to meet our liquidity needs through cash and investments on hand, cash flows from operations, draws on our Revolving Credit Facility and cash flow from sources discussed above. We believe that our liquidity and sources of capital are adequate to satisfy our cash requirements. We cannot, however, be certain that these sources of funds will be available at a time and upon terms acceptable to the Company in sufficient amounts to meet our liquidity needs. Our investment guidelines also provide that our aggregate borrowings (secured and unsecured) will not exceed 50% of the cost of our tangible assets at the time of any new borrowing, subject to our board of directors’ discretion.

In the long term, we may also voluntarily repurchase our outstanding debt or equity securities (depending on prevailing market conditions, our liquidity, contractual restrictions and other factors) through cash purchases, open-market purchases, privately negotiated transactions, tender offers or otherwise.

In recent years, financial markets have been volatile in general. If sustained, this could have a material adverse effect on our business, financial condition and results of operations, including our ability to continue to make acquisitions of new properties and fund investments for improvements at existing properties, and refinance our existing indebtedness.

Dividends

The Company is required to pay dividends to its stockholders at least equal to 90% of its taxable income in order to qualify and maintain its qualification as a REIT. As a result of this distribution requirement, our Operating Partnership cannot rely on retained earnings to fund its ongoing operations to the same extent that other companies whose parent companies are not REITs can. Our ability to continue to pay dividends is dependent upon our ability to continue to generate cash flows, service any debt obligations we have, including our Notes due 2026, and make accretive new investments.

The following table describes the dividends declared by the Company during the nine months ended September 30, 2024:

<u>Declaration Date</u>	<u>Security Class</u>	<u>Amount Per Share</u>	<u>Period Covered</u>	<u>Dividend Paid Date</u>	<u>Dividend Amount</u>
March 15, 2024	Common stock	\$ 1.82	January 1, 2024 to March 31, 2024	April 15, 2024	\$ 51,957
March 15, 2024	Series A preferred stock	\$ 0.5625	January 15, 2024 to April 14, 2024	April 15, 2024	\$ 338
June 14, 2024	Common stock	\$ 1.90	April 1, 2024 to June 30, 2024	July 15, 2024	\$ 54,253
June 14, 2024	Series A preferred stock	\$ 0.5625	April 15, 2024 to July 14, 2024	July 15, 2024	\$ 338
September 13, 2024	Common stock	\$ 1.90	July 1, 2024 to September 30, 2024	October 15, 2024	\$ 54,253
September 13, 2024	Series A preferred stock	\$ 0.5625	July 15, 2024 to October 14, 2024	October 15, 2024	\$ 564

[Table of Contents](#)*Contractual Obligations*

The following table summarizes our contractual obligations as of September 30, 2024 (in thousands):

<u>Payments Due by Year</u>	<u>Notes due 2026</u>	<u>Interest</u>	<u>Office Rent</u>	<u>Total</u>
2024 (three months ended December 31)	\$ —	\$ 4,125	\$ 128	\$ 4,253
2025	—	16,500	526	17,026
2026	300,000	6,646	543	307,189
2027	—	—	45	45
2028	—	—	—	—
Total	<u>\$ 300,000</u>	<u>\$ 27,271</u>	<u>\$ 1,242</u>	<u>\$ 328,513</u>

Additionally, as of September 30, 2024, we had (1) \$44.2 million outstanding in commitments related to improvement allowances, which generally may be requested by the tenants at any time up until a date that is near the expiration of the initial term of the applicable lease; (2) \$1.1 million outstanding in commitments related to contracts with vendors for improvements at our properties, which are expected to be incurred by December 31, 2024; and (3) \$1.0 million outstanding in commitments to fund the Construction Loan. The commitments discussed in this paragraph are excluded from the table of contractual obligations above, as improvement allowances generally may be requested by the tenants at any time up until a date that is near the expiration of the initial term of the applicable lease, there is no explicit time frame for incurring the obligations related to our contracts with vendors, and Construction Loan funding generally may be requested by the borrower from time to time, subject to satisfaction of certain conditions.

Supplemental Guarantor Information

Our Notes due 2026 are the unsecured senior obligations of our Operating Partnership and are fully and unconditionally guaranteed on an unsecured basis by us. The Notes due 2026 and the related guarantee are registered securities under the Securities Act. See Note 7 “Debt” to our condensed consolidated financial statements included in this report for a description of certain terms of our Notes due 2026.

As a result of the amendments to Rule 3-10 of Regulation S-X, subsidiary issuers of obligations guaranteed by the parent are not required to provide separate financial statements, provided that the subsidiary obligor is consolidated into the parent company’s consolidated financial statements, the parent guarantee is “full and unconditional” and, subject to certain exceptions as set forth below, the alternative disclosure required by Rule 13-01 of Regulation S-X is provided, which includes narrative disclosure and summarized financial information. Accordingly, separate consolidated financial statements of our Operating Partnership have not been presented.

Furthermore, as permitted under Rule 13-01(a)(4)(vi) of Regulation S-X, we have excluded the summarized financial information for the Operating Partnership because the assets, liabilities, and results of operations of the Operating Partnership are not materially different than the corresponding amounts in our condensed consolidated financial statements, and management believes such summarized financial information would be repetitive and would not provide incremental value to investors.

Non-GAAP Financial Information

In addition to the required GAAP presentations, we use certain non-GAAP performance measures as we believe these measures improve the understanding of our operational results. We continually evaluate the usefulness, relevance, limitations, and calculation of our reported non-GAAP performance measures to determine how best to provide relevant information to the public and thus such reported measures could change.

Funds from Operations, Normalized Funds from Operations and Adjusted Funds from Operations

Funds from operations (“FFO”) and FFO per share are operating performance measures adopted by the National Association of Real Estate Investment Trusts, Inc. (“NAREIT”). NAREIT defines FFO as the most commonly accepted and reported measure of a REIT’s operating performance equal to net income (computed in accordance with GAAP), excluding gains (or losses) from sales of property, depreciation, amortization and impairment related to real estate properties, and after adjustments for unconsolidated partnerships and joint ventures. The Company also excludes the disposition-contingent lease termination fee relating to the sale of our property in Los Angeles, California in May 2024.

Management believes that net income, as defined by GAAP, is the most appropriate earnings measurement. However, management believes FFO and FFO per share to be supplemental measures of a REIT’s performance because they provide an understanding of the operating performance of our properties without giving effect to certain significant non-cash items, primarily

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depreciation expense. Historical cost accounting for real estate assets in accordance with GAAP assumes that the value of real estate assets diminishes predictably over time. However, real estate values instead have historically risen or fallen with market conditions. We believe that by excluding the effect of depreciation, FFO and FFO per share can facilitate comparisons of operating performance between periods. We report FFO and FFO per share because these measures are observed by management to also be the predominant measures used by the REIT industry and by industry analysts to evaluate REITs and because FFO per share is consistently reported, discussed, and compared by research analysts in their notes and publications about REITs. For these reasons, management has deemed it appropriate to disclose and discuss FFO and FFO per share.

We compute normalized funds from operations (“Normalized FFO”) by adjusting FFO, as defined by NAREIT, to exclude certain GAAP income and expense amounts that we believe are infrequent and unusual in nature and/or not related to our core real estate operations. Exclusion of these items from similar FFO-type metrics is common within the equity REIT industry, and management believes that presentation of Normalized FFO and Normalized FFO per share provides investors with a metric to assist in their evaluation of our operating performance across multiple periods and in comparison to the operating performance of other companies, because it removes the effect of unusual items that are not expected to impact our operating performance on an ongoing basis. Normalized FFO is used by management in evaluating the performance of our core business operations. Items included in calculating FFO that may be excluded in calculating Normalized FFO include certain transaction-related gains, losses, income or expense or other non-core amounts as they occur.

Management believes that adjusted funds from operations (“AFFO”) and AFFO per share are also appropriate supplemental measures of a REIT’s operating performance. We calculate AFFO by adjusting Normalized FFO for certain cash and non-cash items.

For all periods presented other than the three months ended September 30, 2024, FFO (diluted), Normalized FFO and AFFO, and FFO, Normalized FFO and AFFO per diluted share include the dilutive impact of the assumed full exchange of the Exchangeable Senior Notes for shares of common stock as if the Exchangeable Senior Notes were exchanged at the beginning of the respective reporting period. The Exchangeable Senior Notes matured in February 2024.

Performance share units (“PSUs”) granted to certain employees were included in dilutive securities to the extent the performance thresholds for vesting of the PSUs were met as measured as of the end of each respective period.

Our computation of FFO, Normalized FFO, and AFFO may differ from the methodology for calculating FFO, Normalized FFO and AFFO utilized by other equity REITs and, accordingly, may not be comparable to such REITs. Further, FFO and AFFO do not represent cash flow available for management’s discretionary use. FFO, Normalized FFO and AFFO should not be considered as an alternative to net income (computed in accordance with GAAP) as an indicator of our financial performance or to cash flow from operating activities (computed in accordance with GAAP) as an indicator of our liquidity, nor is it indicative of funds available to fund our cash needs, including our ability to pay dividends or make distributions. FFO, Normalized FFO and AFFO should be considered only as supplements to net income computed in accordance with GAAP as measures of operations.

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The table below is a reconciliation of net income attributable to common stockholders to FFO, Normalized FFO and AFFO for the three and nine months ended September 30, 2024 and 2023 (in thousands, except share and per share amounts):

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2024	2023	2024	2023
Net income attributable to common stockholders	\$ 39,651	\$ 41,256	\$ 120,396	\$ 122,941
Real estate depreciation and amortization	17,944	16,678	52,567	50,096
Disposition-contingent lease termination fee, net of loss on sale of real estate ⁽¹⁾	—	—	(451)	—
FFO attributable to common stockholders (basic)	57,595	57,934	172,512	173,037
Cash and non-cash interest expense on Exchangeable Senior Notes	—	50	28	169
FFO attributable to common stockholders (diluted)	57,595	57,984	172,540	173,206
Litigation-related expense	210	1,112	520	2,328
Loss (gain) on exchange of Exchangeable Senior Notes	—	—	—	(22)
Normalized FFO attributable to common stockholders (diluted)	57,805	59,096	173,060	175,512
Interest income on seller-financed note ⁽²⁾	268	402	1,074	939
Deferred lease payments received on sales-type leases ⁽³⁾	1,452	—	4,370	—
Stock-based compensation	4,316	4,934	13,002	14,647
Non-cash interest expense	419	335	1,208	992
Above-market lease amortization	23	23	69	69
AFFO attributable to common stockholders (diluted)	\$ 64,283	\$ 64,790	\$ 192,783	\$ 192,159
FFO per common share – diluted	\$ 2.02	\$ 2.05	\$ 6.04	\$ 6.13
Normalized FFO per common share – diluted	\$ 2.02	\$ 2.09	\$ 6.06	\$ 6.21
AFFO per common share – diluted	\$ 2.25	\$ 2.29	\$ 6.75	\$ 6.80
Weighted average common shares outstanding – basic	28,254,565	27,983,004	28,216,946	27,971,544
Restricted stock and RSUs	299,770	206,919	293,105	193,503
PSUs	25,352	—	25,352	—
Dilutive effect of Exchangeable Senior Notes	—	75,682	12,647	83,007
Weighted average common shares outstanding – diluted	28,579,687	28,265,605	28,548,050	28,248,054

- (1) Amount reflects the \$3.9 million disposition-contingent lease termination fee received concurrently with the sale of our property in Los Angeles, California, net of the loss on sale of real estate of \$3.4 million (see Note 6 “Investments in Real Estate” to our condensed consolidated financial statements included in this report for more information).
- (2) Amount reflects the non-refundable interest received on the seller-financed note issued to us by the buyer in connection with our disposition of a portfolio of four properties in southern California previously leased to affiliates of Vertical, which is recognized as a deposit liability and is included in other liabilities in our condensed consolidated balance sheet as of September 30, 2024, as the transaction did not qualify for recognition as a completed sale.
- (3) Amount reflects the non-refundable lease payments received on two sales-type leases which are recognized as a deposit liability starting on January 1, 2024, and is included in other liabilities in our condensed consolidated balance sheet as of September 30, 2024, as the transaction did not qualify for recognition as a completed sale (see Note 2 “Lease Accounting” to our condensed consolidated financial statements included in this report for more information). Prior to the lease modifications on January 1, 2024, which extended the initial lease terms, the leases were classified as operating leases and the lease payments received were recognized as rental revenue and therefore, included in net income attributable to common stockholders.

Critical Accounting Estimates

Our condensed consolidated financial statements have been prepared in accordance with GAAP, which requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ materially from those estimates and assumptions.

We continually evaluate the estimates and assumptions we use to prepare our consolidated financial statements. Our critical accounting estimates are defined as accounting estimates or assumptions made in accordance with GAAP, which involve a significant level of estimation uncertainty or subjectivity and have had or are reasonably likely to have a material impact on our financial condition or results of operations. The following critical accounting estimates discussion reflects what we believe are the most significant estimates and assumptions used in the preparation of our consolidated financial statements. This discussion of our critical accounting estimates is intended to supplement the description of our accounting policies in the footnotes to our condensed consolidated financial statements and to provide additional insight into the information used by management when evaluating significant estimates and assumptions. For further discussion of our significant accounting policies, see Note 2 “Summary of Significant Accounting Policies and Procedures and Recent Accounting Pronouncements” to our consolidated financial statements in



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our Annual Report on Form 10-K for the year ended December 31, 2023 and to our condensed consolidated financial statements included in this report.

Lease Accounting

We account for our leases under Accounting Standards Codification 842, Leases, which requires significant estimates and judgments by management in its application. Upon lease inception or lease modification, we assess the lease classification of both the land and building components of the property. The determination of lease classification requires the calculation of the rate implicit in the lease, which is driven by significant estimates relating to the unguaranteed residual value of the assets at the end of the non-cancelable lease term. A decrease of 5% in the estimated unguaranteed residual value of our properties would result in changes to the lease classification of one lease that was modified during the nine months ended September 30, 2024.

Acquisition of Rental Property, Depreciation and Impairment

All of our acquisitions of rental properties to date were accounted for as asset acquisitions and not business combinations because substantially all of the fair value is concentrated in a single identifiable asset or group of similar identifiable assets (i.e., land, buildings, and related intangible assets). The accounting model for asset acquisitions requires that the acquisition consideration (including acquisition costs) be allocated to the individual assets acquired and liabilities assumed on a relative fair value basis.

We exercise judgment to determine key assumptions used in each valuation technique (cost, income, and sales approach). For example, we are required to use judgment and make a number of assumptions, including those related to projected growth in rental rates and operating expenses, anticipated trends and market/economic conditions. The use of different assumptions can affect the amount of consideration allocated to the acquired depreciable/amortizable asset, which in turn can impact our net income due to the recognition of the related depreciation/amortization expense in our condensed consolidated statements of income.

We depreciate buildings and improvements where we are considered the owner for accounting purposes based on our evaluation of the estimated useful life of each specific asset, not to exceed 40 years. Determining whether expenditures meet the criteria for capitalization and the assignment of depreciable lives requires management to exercise significant judgment.

The determination of whether we are or the tenant is the owner of improvements for accounting purposes is subject to significant judgment. In making that determination, we consider numerous factors and perform a detailed evaluation of each individual lease. No one factor is determinative in reaching a conclusion. The factors we evaluate include but are not limited to the following:

- whether the lease agreement requires landlord approval of how the improvement allowance is spent prior to installation of the improvements;
- whether the lease agreement requires the tenant to provide evidence to the landlord supporting the cost and what the improvement allowance was spent on prior to payment by the landlord for such improvements;
- whether the improvements are unique to the tenant or reusable by other tenants;
- whether the tenant is permitted to alter or remove the improvements without the consent of the landlord or without compensating the landlord for any lost utility or diminution in fair value; and
- whether the ownership of the improvements remains with the landlord or remains with the tenant at the end of the lease term.

When we conclude that we are the owner of improvements for accounting purposes using the factors discussed above, we record the cost to construct the improvements as our capital asset.

We evaluate our real estate assets for potential impairment whenever events or changes in circumstances indicate that the carrying amount of a given asset may not be recoverable. We evaluate our real estate assets for impairment on a property-by-property basis. Indicators we use to determine whether an impairment evaluation is necessary include:

- deterioration in rental rates for a specific property;
- deterioration of a given rental submarket;
- significant change in strategy or use of a specific property or any other event that could result in a decreased holding period, including classifying a property as held for sale, or significant development delay;
- evidence of material physical damage to the property; and
- default by a significant tenant when any of the other indicators above are present.

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When we evaluate for potential impairment our real estate assets to be held and used, we first evaluate whether there are any indicators of impairment. If any impairment indicators are present for a specific real estate asset, we then perform an undiscounted cash flow analysis and compare the net carrying amount of the real estate asset to the real estate asset's estimated undiscounted future cash flow over the anticipated holding period. If the estimated undiscounted future cash flow is less than the net carrying amount of the real estate asset, we perform an impairment loss calculation to determine if the fair value of the real estate asset is less than the net carrying value of the real estate asset. Our impairment loss calculation compares the net carrying amount of the real estate asset to the real estate asset's estimated fair value, which may be based on estimated discounted future cash flow calculations or third-party valuations or appraisals. We recognize an impairment loss if the amount of the asset's net carrying amount exceeds the asset's estimated fair value. If we recognize an impairment loss, the estimated fair value of the asset becomes its new cost basis. For a depreciable long-lived asset, the new cost basis would be depreciated (amortized) over the remaining useful life of that asset. If a real estate asset is designated as real estate held for sale, it is carried at the lower of the net carrying value or estimated fair value less costs to sell, and depreciation ceases.

Our undiscounted cash flow and fair value calculations contain uncertainties because they require management to make assumptions and to apply judgment to estimate future cash flow and property fair values, including determining our estimated holding period. We are also required to make a number of assumptions relating to future economic and market events and prospective operating trends.

For each property where such an indicator occurred, we completed an impairment evaluation. After completing this process, we determined that for each of the operating properties evaluated, undiscounted cash flows over the holding period were in excess of carrying value and, therefore, we did not record any impairment losses for these properties for the three and nine months ended September 30, 2024 and 2023. Significant adverse changes in the critical accounting estimates used in the impairment evaluation are required for the undiscounted cash flows over the holding period to be less than the carrying value as of September 30, 2024.

Impact of Real Estate and Credit Markets

In the commercial real estate market, property prices generally continue to fluctuate. Likewise, during certain periods, the U.S. credit markets have experienced significant price volatility, dislocations, and liquidity disruptions, which may impact our access to and cost of capital. We continually monitor the commercial real estate and U.S. credit markets carefully and, if required, will make decisions to adjust our business strategy accordingly. In recent years, the commercial real estate market generally has experienced significant disruptions from, among other things, significant increases in interest rates and changing tenant preferences for space.

Interest Rate Risk

As of September 30, 2024, we had \$300.0 million principal amount of Notes due 2026 outstanding at a fixed interest rate of 5.50%, and therefore, if interest rates decline, our required payments may exceed those based on current market rates. It is possible that a property we acquire in the future would be subject to a mortgage, which we may assume. In recent years, the commercial real estate market generally has experienced significant disruptions from, among other things, significant increases in interest rates and changing tenant preferences for space. Our Revolving Credit Facility bears interest at a variable rate based on the greater of the prime rate and an applicable margin and a stipulated interest rate; therefore, if interest rates increase, our required payments on any amounts outstanding on our Revolving Credit Facility may also increase. As of September 30, 2024, we had no outstanding borrowings on our Revolving Credit Facility.

Impact of Inflation

The U.S. economy has experienced a period of increased inflation in recent years. We enter into leases that generally provide for fixed increases in rent. During times when inflation is greater than the fixed increases in rent, as provided for in the leases, rent increases may not keep up with the rate of inflation.

Seasonality

Our business has not been, and we do not expect our business in the future to be, subject to material seasonal fluctuations.

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

Our Notes due 2026 bear interest at a fixed rate of 5.50% per annum until maturity and is the only debt we have outstanding. Our Revolving Credit Facility bears interest at a variable rate based on the greater of the prime rate and an applicable margin and a stipulated interest rate; therefore, if interest rates increase, our required payments on any amounts outstanding on our Revolving Credit Facility may also increase.

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Our investments in short-term money market funds, certificates of deposit and short-term investments in obligations of the U.S. government with an original maturity at the time of purchase of greater than 90 days are less sensitive to market fluctuations than a portfolio of long-term securities. Accordingly, we believe that a significant change in interest rates would not have a material effect on the condensed consolidated financial statements.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management has evaluated, under supervision of the Audit Committee of the Board of Directors and with the participation of our principal executive and principal financial officers, the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of September 30, 2024. Based on that evaluation, our principal executive and financial officers concluded that our disclosure controls and procedures were effective as of September 30, 2024 (the end of the period covered by this Quarterly Report).

Changes in Internal Control Over Financial Reporting

There have been no changes in our system of internal control over financial reporting during the quarter ended September 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II

ITEM 1. LEGAL PROCEEDINGS

For a description of our legal proceedings, see Note 11 “Commitments and Contingencies — Litigation” to our condensed consolidated financial statements, which is hereby incorporated by reference.

ITEM 1A. RISK FACTORS

In addition to the other information set forth in this report, you should carefully consider the factors discussed in Part I, “Item 1A. Risk Factors” in our Annual Report on Form 10-K for the year ended December 31, 2023, and in Part II, “Item 1A. Risk Factors” in our Quarterly Report on Form 10-Q for the quarter ended June 30, 2024, which could materially affect our business, financial condition and/or results of operations. Except to the extent additional factual information disclosed elsewhere in this Quarterly Report on Form 10-Q relates to such risk factors, there have been no material changes to the risk factors described in the “Risk Factors” section in our Annual Report on Form 10-K for the year ended December 31, 2023, and in Part II, “Item 1A. Risk Factors” in our Quarterly Report on Form 10-Q for the quarter ended June 30, 2024. The risks as described in our Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q are not the only risks facing our Company. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or results of operations.

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

(a)

During the nine months ended September 30, 2024, we issued 28,408 shares of our common stock upon exchange by holders of \$4.3 million of outstanding principal amount of our Exchangeable Senior Notes. Such shares of our common stock were issued in reliance on Section 3(a)(9) of the Securities Act of 1933, as amended.

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(c)

Period	Total Number of Shares of Common Stock Purchased	Average Price Paid per Common Share	Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet be Purchased Under the Plans or Programs
January 1, 2024 - January 31, 2024	7,442 (1)\$	101.19 (2)	—	—
February 1, 2024 - February 29, 2024	—	—	—	—
March 1, 2024 - March 31, 2024	—	—	—	—
April 1, 2024 - April 30, 2024	—	—	—	—
May 1, 2024 - May 31, 2024	—	—	—	—
June 1, 2024 - June 30, 2024	—	—	—	—
July 1, 2024 - July 31, 2024	—	—	—	—
August 1, 2024 - August 31, 2024	—	—	—	—
September 1, 2024 - September 30, 2024	—	—	—	—
Total	7,442	\$ 101.19	—	—

(1) Represents shares that were forfeited to cover the employees' tax withholding obligation upon vesting.

(2) The value of the common stock withheld was based on the closing price of our common stock on the applicable vesting date.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

(c)

During the nine months ended September 30, 2024, no director or Section 16 officer of the Company adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading agreement," as each term is defined in Item 408(a) of Regulation S-K.

ITEM 6. EXHIBITS

Exhibit Number	Description of Exhibit
3.1*	Second Articles of Amendment and Restatement of Innovative Industrial Properties, Inc. (including Articles Supplementary Classifying Innovative Industrial Properties, Inc.'s 9.00% Series A Cumulative Redeemable Preferred Stock).
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1*	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101INS*	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH*	Inline XBRL Taxonomy Extension Schema Document.
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104*	Cover Page Interactive Date File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

By: /s/ Paul Smithers

Paul Smithers

President, Chief Executive Officer and Director

(Principal Executive Officer)

By: /s/ David Smith

David Smith

Chief Financial Officer and Treasurer

(Principal Financial Officer)

Dated November 7, 2024

SECOND ARTICLES OF AMENDMENT AND RESTATEMENT

OF

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

FIRST: Innovative Industrial Properties, Inc., a Maryland corporation, desires to amend and restate its charter as currently in effect and as hereinafter amended.

SECOND: The following provisions are all the provisions of the charter currently in effect and as hereinafter amended:

**ARTICLE I
NAME**

The name of the corporation is Innovative Industrial Properties, Inc. (the “**Company**”).

**ARTICLE II
PURPOSES AND POWERS**

The purposes for which the Company is formed are to engage in any lawful act or activity (including, without limitation or obligation, qualifying and engaging in business as a real estate investment trust under Sections 856 through 860, or any successor sections, of the Internal Revenue Code of 1986, as amended (the “**Code**”), for which corporations may be organized under the MGCL and the general laws of the State of Maryland as now or hereafter in force.

**ARTICLE III
RESIDENT AGENT AND PRINCIPAL OFFICE**

The address of the Company’s registered office in the State of Maryland is 7 St. Paul Street, Suite 820, Baltimore, Maryland 21202, and the name of the Company’s registered agent at such address is CSC-Lawyers Incorporating Service Company. The address of the Company’s principal office in the State of Maryland is c/o CSC-Lawyers Incorporating Service Company, 7 St. Paul Street, Suite 820, Baltimore, Maryland 21202. The Company may have such other offices and places of business within or outside the State of Maryland as the Board may from time to time determine.

**ARTICLE IV
DEFINITIONS**

As used in the Charter, the following terms shall have the following meanings unless the context otherwise requires:

“**BOARD**” means the Board of Directors of the Company.

“**BYLAWS**” means the Bylaws of the Company, as amended from time to time.

“**CHARTER**” means the charter of the Company, as amended from time to time.

“**CODE**” shall have the meaning as provided in Article II herein.

“**COMMON STOCK**” shall have the meaning as provided in Section 5.1 herein.

“**COMPANY**” shall have the meaning as provided in Article I herein.

“**DIRECTOR**” means a director of the Company.

“**DISTRIBUTIONS**” means any distributions (as such term is defined in Section 2-301 of the MGCL) pursuant to Section 5.2(iii) hereof, by the Company to owners of Shares, including distributions that may constitute a return of capital for federal income tax purposes.

“**MGCL**” means the Maryland General Corporation Law, as in effect from time to time.

“**PERSON**” means an individual, corporation, partnership, limited liability company, estate, trust (including a trust qualified under Sections 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other legal entity and also includes a “group” as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, and a group to which an Excepted Holder Limit (as defined in Section 5.7(i) hereof) applies.

“**PREFERRED STOCK**” shall have the meaning as provided in Section 5.1 herein.

“**REIT**” means a real estate investment trust under the REIT Provisions of the Code.

“**REIT PROVISIONS OF THE CODE**” means Sections 856 through 860 of the Code and any successor or other provisions of the Code relating to real estate investment trusts (including provisions as to the attribution of ownership of beneficial interests therein) and the regulations promulgated thereunder.

“**SECURITIES**” means any of the following issued by the Company, as the text requires: Shares, any other stock, shares or other evidences of equity or beneficial or other interests, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire, any of the foregoing.

“**SHARES**” means shares of stock of the Company of any class or series, including Common Stock and Preferred Stock.

“**STOCKHOLDERS**” means the holders of record of the Shares as maintained in the books and records of the Company or its transfer agent.

ARTICLE V
STOCK

SECTION 5.1 AUTHORIZED SHARES. The total number of Shares that the Company shall have authority to issue, each with a par value of \$0.001 per share, is 100,000,000 Shares, consisting of (a) 50,000,000 shares of common stock (the “**Common Stock**”) and (b) 50,000,000 shares of preferred stock (the “**Preferred Stock**”). The aggregate par value of all authorized shares of stock having par value is \$100,000. If Shares of one (1) class of stock are classified or reclassified into Shares of another class of stock pursuant to Section 5.2(ii) or Section 5.3 of this Article V, the number of authorized Shares of the former class shall be automatically decreased and the number of Shares of the latter class shall be automatically increased, in each case by the number of Shares so classified or reclassified, as the case may be, so that the aggregate number of Shares of all classes that the Company has authority to issue shall not be more than the total number of Shares set forth in the first sentence of this Section 5.1. The Board, with the approval of a majority of the entire Board and without any action by the Stockholders, may amend the Charter from time to time to increase or decrease the aggregate number of Shares or the number of Shares of any class or series that the Company has authority to issue.

SECTION 5.2 COMMON STOCK. The following is a description of the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends, qualifications and terms and conditions of redemption of shares of Common Stock of the Company:

(i) **COMMON STOCK SUBJECT TO TERMS OF PREFERRED STOCK.** The shares of Common Stock shall be subject to the express terms of any series of Preferred Stock.

(ii) **DESCRIPTION.** Subject to Section 5.7 hereof and except as may otherwise be specified in the Charter, each share of Common Stock shall entitle the holder thereof to one vote. The Board may classify or reclassify any unissued shares of Common Stock (whether or not such shares have been previously classified or reclassified) from time to time into one or more classes or series of stock by setting or changing in any one or more respects the class and series designations of shares of capital stock or setting or changing in any one or more respects the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption of such shares of stock.

(iii) **DISTRIBUTION RIGHTS.** The Board from time to time may authorize the Company to declare and pay to Stockholders such dividends or other Distributions in cash or other assets of the Company or in Securities of the Company, including Shares of one class payable to holders of Shares of another class, or from any other source as the Board in its discretion shall determine. The Board shall endeavor to authorize the Company to declare and pay such dividends and other Distributions as shall be necessary for the Company to qualify as a REIT under the REIT Provisions of the Code unless the Board has determined, in its sole discretion, that qualification as a REIT is not in the best interests of the Company; provided, however, Stockholders shall have no right to any dividend or other Distribution unless and until authorized by the Board and declared by the Company. The exercise of the powers and rights of the Board pursuant to this section shall be subject to the provisions of any class or series of Shares at the time outstanding. The receipt by any Person in whose name any Shares are registered on the records of the Company or by his or her duly authorized agent shall be a sufficient discharge for all dividends or other Distributions payable or deliverable in respect of such Shares and from all liability to see to the application thereof.

(iv) **RIGHTS UPON LIQUIDATION.** In the event of any voluntary or involuntary liquidation, dissolution or winding up, or any distribution of the assets of the Company, the aggregate assets available for distribution to holders of shares of Common Stock shall be determined in accordance with applicable law. Each holder of shares of Common Stock of a particular class shall be entitled to receive, ratably with each other holder of shares of Common Stock of such class, that portion of such aggregate assets available for distribution ratably in proportion to the number of shares of Common Stock held by them.

(v) **VOTING RIGHTS.** Except as may be provided otherwise in the Charter, and subject to the express terms of any class or series of Preferred Stock hereafter classified or reclassified, the holders of shares of Common Stock shall have the exclusive right to vote on all matters (as to which a common Stockholder shall be entitled to vote pursuant to applicable law) at all meetings of the Stockholders. Shares of Common Stock shall not have cumulative voting rights.

SECTION 5.3 PREFERRED STOCK. The Board may classify any unissued shares of Preferred Stock and reclassify any previously classified but unissued shares of Preferred Stock of any series from time to time, into one or more classes or series of Shares.

SECTION 5.4 CLASSIFIED OR RECLASSIFIED SHARES. Prior to issuance of classified or reclassified Shares of any class or series, the Board by resolution shall: (a) designate that class or series to distinguish it from all other classes and series of Shares; (b) specify the number of Shares to be included in the class or series; (c) set or change, subject to the provisions of Section 5.7 and subject to the express terms of any class or series of Shares outstanding at the time, the preferences, conversion or other rights, voting powers (including the ability to grant exclusive voting rights on a Charter amendment that would alter contract rights, as expressly set forth in the Charter, only of the specified class or series of stock), restrictions, including without limitation, restrictions as to transferability, limitations as to dividends or other Distributions, qualifications and terms and conditions of redemption for each class or series; and (d) cause the Company to file articles supplementary with the State Department of Assessments and Taxation of Maryland. Any of the terms of any class or series of Shares set or changed pursuant to clause (c) of this Section 5.4 may be made dependent upon facts or events ascertainable outside the Charter (including determinations by the Board or other facts or events within the control of the Company) and may vary among holders thereof, provided that the manner in which such facts, events or variations shall operate upon the terms of such class or series of Shares is clearly and expressly set forth in the articles supplementary or other Charter document.

SECTION 5.5 STOCKHOLDERS' CONSENT IN LIEU OF MEETING. Any action required or permitted to be taken at any meeting of the Stockholders may be taken without a meeting by consent, in writing or by electronic transmission, in any manner and by the vote permitted by the MGCL and set forth in the Bylaws.

SECTION 5.6 CHARTER AND BYLAWS. The rights of all Stockholders and the terms of all Shares are subject to the provisions of the Charter and the Bylaws. The Board shall have the exclusive power to adopt, alter or repeal any provision of the Bylaws and to make new Bylaws.

SECTION 5.7 RESTRICTIONS ON OWNERSHIP AND TRANSFER.

(i) **DEFINITIONS.** For purposes of this Section 5.7, the following terms shall have the following meanings:

"AGGREGATE SHARE OWNERSHIP LIMIT" means 9.8% (in value or number of Shares, whichever is more restrictive) of the aggregate of the outstanding Shares. The value and number of the outstanding Shares shall be determined by the Board in good faith, which determination shall be conclusive for all purposes hereof.

"BENEFICIAL OWNERSHIP" means ownership of Shares by a Person, whether the interest in the Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"BUSINESS DAY" means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

"CHARITABLE BENEFICIARY" means one or more beneficiaries of the Trust as determined pursuant to Section 5.7(iii)(f), provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

"CONSTRUCTIVE OWNERSHIP" means ownership of Shares by a Person, whether the interest in the Shares is held directly or indirectly (including by a nominee), and shall include interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code. The terms "Constructive Owner," "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"EXCEPTED HOLDER" means a Stockholder for whom an Excepted Holder Limit is created by the Board pursuant to Section 5.7(ii)(g).

“**EXCEPTED HOLDER LIMIT**” means, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board pursuant to Section 5.7(ii)(g), and subject to adjustment pursuant to Section 5.7(ii)(h), the percentage limit established by the Board pursuant to Section 5.7(ii)(g).

“**MARKET PRICE**” on any date means, with respect to any class or series of outstanding Shares, the Closing Price for such Shares on such date. The “**Closing Price**” on any date shall mean the last sale price for such Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Shares, in either case as reported on the principal national securities exchange on which such Shares are listed or admitted to trading or, if such Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the principal automated quotation system that may then be in use or, if such Shares are not quoted by any such system, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such Shares selected by the Board or, in the event that no trading price is available for such Shares, the fair market value of the Shares, as determined in good faith by the Board.

“**NYSE**” means the New York Stock Exchange.

“**OWNERSHIP LIMIT**” means (i) with respect to shares of Common Stock, 9.8% (in value or number of Shares, whichever is more restrictive) of the outstanding shares of Common Stock of the Company; and (ii) with respect to any class or series of shares of Preferred Stock, 9.8% (in value or number of Shares, whichever is more restrictive) of the outstanding shares of such class or series of Preferred Stock of the Company. The number and value of the outstanding Shares of the Company shall be determined by the Board in good faith, which determination shall be conclusive for all purposes hereof. For purposes of determining the percentage ownership of Shares by any Person, Shares that may be acquired upon conversion, exchange or exercise of any Securities of the Company directly or constructively held by such Person, but not Shares issuable with respect to the conversion, exchange or exercise of Securities for the Company held by other Persons, shall be deemed to be outstanding prior to conversion, exchange or exercise.

“**PROHIBITED OWNER**” means, with respect to any purported Transfer, any Person who, but for the provisions of Section 5.7, would Beneficially Own or Constructively Own Shares in violation of Section 5.7(ii)(a), and if appropriate in the context, shall also mean any Person who would have been the record owner of the Shares that the Prohibited Owner would have so owned.

“**RESTRICTION TERMINATION DATE**” means the first day on which the Board determines pursuant to Section 7.3 hereof that it is no longer in the best interests of the Company to attempt to, or continue to, qualify as a REIT or that compliance with the restrictions and limitations on Beneficial Ownership, Constructive Ownership and Transfers of Shares set forth herein is no longer required in order for the Company to qualify as a REIT.

“**TRANSFER**” means any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event that causes any Person to acquire Beneficial Ownership or Constructive Ownership of Shares or the right to vote or receive dividends on Shares, or any agreement to take any such actions or cause any such events, including (a) the granting or exercise of any option (or any disposition of any option), (b) any disposition of any Securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right and (c) Transfers of interests in other entities that result in changes in Beneficial or Constructive Ownership of Shares; in each case, whether voluntary or involuntary, whether owned of record, Constructively Owned or Beneficially Owned and whether by operation of law or otherwise. The terms “Transferring” and “Transferred” shall have the correlative meanings.

“**TRUST**” means any trust provided for in Section 5.7(iii)(a).

“**TRUSTEE**” means the Person unaffiliated with the Company and a Prohibited Owner that is appointed by the Company to serve as trustee of the Trust.

(ii) **SHARES.**

(a) **OWNERSHIP LIMITATIONS.** During the period commencing on the date that the Company elects to qualify for federal income tax treatment as a REIT and prior to the Restriction Termination Date, but subject to Section 5.8:

(I) **BASIC RESTRICTIONS.**

(A) (1) Except as set forth in any articles supplementary creating any class or series of Shares, no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Aggregate Share Ownership Limit, (2) no Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in Excess of the Ownership Limit, and (3) no Excepted Holder shall Beneficially Own or Constructively Own Shares in excess of the Excepted Holder Limit for such Excepted Holder.

(B) No Person shall Beneficially or Constructively Own Shares to the extent that such Beneficial or Constructive Ownership of Shares would result in the Company being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, but not limited to, Beneficial or Constructive Ownership that would result in the Company owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Company from such tenant would cause the Company to fail to satisfy any of the gross income requirements of Section 856(c) of the Code).

(C) No Person shall Transfer any Shares if, as a result of the Transfer, the Shares would be Beneficially Owned by less than 100 Persons (determined without reference to the rules of attribution under Section 544 of the Code). Notwithstanding any other provisions contained herein (but subject to Section 5.8), any Transfer of Shares that, if effective, would result in Shares being Beneficially Owned by less than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void *ab initio*, and the intended transferee shall acquire no rights in such Shares.

(II) **TRANSFER IN TRUST.** If any Transfer of Shares occurs which, if effective, would result in any Person Beneficially Owning or Constructively Owning Shares in violation of Section 5.7(ii)(a)(I)(A) or (B),

(A) then that number of Shares the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate Section 5.7(ii)(a)(I)(A) or (B) (rounded up to the nearest whole share) shall be automatically transferred to a Trust for the benefit of a Charitable Beneficiary, as described in Section 5.7(iii), effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such Shares; or

(B) if the transfer to the Trust described in clause (A) of this sentence would not be effective for any reason to prevent the violation of Section 5.7(ii)(a)(I)(A) or (B) then the Transfer of that number of Shares that otherwise would cause any Person to violate Section 5.7(ii)(a)(I)(A) or (B) shall be void *ab initio*, and the intended transferee shall acquire no rights in such Shares.

(III) To the extent that, upon a transfer of Shares pursuant to Section 5.7(ii)(a)(II), a violation of any provision of this Section 5.7 would nonetheless be continuing (for example, where the ownership of Shares by a single Trust would violate the 100 stockholder requirement applicable to REITs), then Shares shall be transferred to the number of Trusts, each having a distinct Trustee and one or more Charitable Beneficiaries that are distinct from those of each other Trust, such that there is not violation of any provisions of this Section 5.7.

(b) **REMEDIES FOR BREACH.** If the Board or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of Section 5.7(ii)(a) or that a Person intends to acquire or has attempted to acquire Beneficial or Constructive Ownership of any Shares in violation of Section 5.7(ii)(a) (whether or not such violation is intended), the Board or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Company to redeem Shares, refusing to give effect to such Transfer on the books of the Company or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer or other event in violation of Section 5.7(ii)(a) shall automatically result in the transfer to the Trust described above, and, where applicable, such Transfer (or other event) shall be void *ab initio* as provided above irrespective of any action (or non-action) by the Board or a committee thereof.

(c) **NOTICE OF RESTRICTED TRANSFER.** Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Shares that will or may violate Section 5.7(ii)(a)(I)(A) or (B) or any Person who would have owned Shares that resulted in a transfer to the Trust pursuant to the provisions of Section 5.7(ii)(a)(II) shall immediately give written notice to the Company of such event, or in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Company such other information as the Company may request in order to determine the effect, if any, of such Transfer on the Company's status as a REIT.

(d) **OWNERS REQUIRED TO PROVIDE INFORMATION.** Prior to the Restriction Termination Date:

(I) every owner of more than five percent (or such lower percentage as required by the Code or the Treasury Regulations promulgated thereunder) of the outstanding Shares, within 30 days after the end of each taxable year, shall give written notice to the Company stating the name and address of such owner, the number of Shares Beneficially Owned and a description of the manner in which such Shares are held. Each such owner shall provide to the Company such additional information as the Company may request in order to determine the effect, if any, of such Beneficial Ownership on the Company's status as a REIT and to ensure compliance with the Aggregate Share Ownership Limit and the Ownership Limit; and

(II) each Person who is a Beneficial or Constructive Owner of Shares and each Person (including the stockholder of record) who is holding Shares for a Beneficial Owner or a Constructive Owner shall provide to the Company such information as the Company may request, in good faith, in order to determine the Company's status as a REIT and to comply with requirements of any taxing authority or governmental authority or to determine such compliance.

(e) **REMEDIES NOT LIMITED.** Subject to Section 7.3 hereof, nothing contained in this Section 5.7(ii)(e) shall limit the authority of the Board to take such other action as it deems necessary or advisable to protect the Company and the interests of its stockholders in preserving the Company's status as a REIT.

(f) **AMBIGUITY.** In the case of an ambiguity in the application of any of the provisions of this Section 5.7(ii), Section 5.7(iii), or any definition contained in Section 5.7(i), the Board shall have the power to determine the application of the provisions of this Section 5.7(ii) or Section 5.7(iii) or any such definition with respect to any situation based on the facts known to it. In the event Section 5.7(ii) or (iii) requires an action by the Board and the Charter fails to provide specific guidance with respect to such action, the Board shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Section 5.7. Absent a decision to the contrary by the Board (which the Board may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 5.7(ii)(b)) acquired Beneficial Ownership or Constructive Ownership of Shares in violation of Section 5.7(ii)(a), such remedies (as applicable) shall apply first to the Shares which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such Shares based upon the relative number of the Shares held by each such Person.

(g) **EXCEPTIONS.**

(I) Subject to Section 5.7(ii)(a)(I)(B), the Board, in its sole discretion, may (prospectively or retroactively) exempt a Person from the Aggregate Share Ownership Limit or the Ownership Limit, as the case may be, and may establish or increase an Excepted Holder Limit for such Person if:

(A) the Board obtains such representations, covenants and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial Ownership or Constructive Ownership of such Shares will violate Section 5.7(ii)(a)(I)(B);

(B) such Person does not, and represents that it will not, actually own or Constructively Own an interest in a tenant of the Company (or a tenant of any entity owned or controlled by the Company) that would cause the Company to actually own or Constructively Own more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and the Board obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact (for this purpose, a tenant from whom the Company (or an entity owned or controlled by the Company) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the opinion of the Board, rent from such tenant would not adversely affect the Company's ability to qualify as a REIT, shall not be treated as a tenant of the Company); and

(C) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in Section 5.7(ii)(a) through Section 5.7(ii)(f)) will result in such Shares being automatically transferred to a Trust in accordance with Section 5.7(ii)(A)(II) and Section 5.7(iii).

(II) Prior to granting any exception pursuant to Section 5.7(ii)(g)(I), the Board may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Company's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(III) Subject to Section 5.7(ii)(a)(I)(B), an underwriter, placement agent or initial purchaser that participates in a public offering, a private placement or private resale of Shares (or Securities convertible into or exchangeable for Shares) may Beneficially Own or Constructively Own Shares (or Securities convertible into or exchangeable for Shares) in excess of the Aggregate Share Ownership Limit, the Ownership Limit, or both such limits, but only to the extent necessary to facilitate such public offering, private placement or resale of such Shares and provided that the restrictions contained in Section 5.7(ii)(a)(I) will not be violated following the distribution by such underwriter, placement agent or initial purchaser of such Shares.

(h) **CHANGE IN AGGREGATE SHARE OWNERSHIP LIMIT AND OWNERSHIP LIMIT.** Subject to Section 5.7(ii)(a)(I)(B), the Board may from time to time increase or decrease the Aggregate Share Ownership Limit and the Ownership Limit; provided, however, that a decreased Aggregate Share Ownership Limit and/or Ownership Limit will not be effective for any Person whose Beneficial Ownership or Constructive Ownership of Shares is in excess of such decreased Aggregate Share Ownership Limit and/or Ownership Limit until such time as such Person's Beneficial Ownership or Constructive Ownership of Shares equals or falls below the decreased Aggregate Share Ownership Limit and/or Ownership Limit, but until such time as such Person's Beneficial Ownership or Constructive Ownership of Shares falls below such decreased Aggregate Share Ownership Limit and/or Ownership Limit any further acquisition or increase in Beneficial Ownership or Constructive Ownership of Shares will be in violation of the Aggregate Share Ownership Limit and/or Ownership Limit and, provided further, that the new Aggregate Share Ownership Limit and/or Ownership Limit would not allow five or fewer Persons (taking into account all Excepted Holders) to Beneficially Own or Constructively Own more than 49.9% in value of the outstanding Shares.

(i) **NOTICE TO STOCKHOLDERS UPON ISSUANCE OR TRANSFER.** Upon issuance or Transfer of Shares prior to the Restriction Termination Date, the Company shall provide the recipient with a notice containing information about the Shares purchased or otherwise Transferred, in lieu of issuance of a share certificate, in a form substantially similar to the following:

The securities of Innovative Industrial Properties, Inc. (the "Company") are subject to restrictions on Beneficial and Constructive Ownership and Transfer for the purpose, among others, of the Company's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended (the "Code"). Subject to certain further restrictions and except as expressly provided in the Company's charter, (i) no Person may Beneficially or Constructively Own Shares in excess of 9.8% of the value of the total outstanding Shares or 9.8% (in value or in number of Shares, whichever is more restrictive) of any class or series of Shares unless such Person is an Excepted Holder (in which case the Excepted Holder Limit shall be applicable); (ii) no Person may Beneficially or Constructively Own Shares that would result in the Company being "closely held" under Section 856(h) of the Code or otherwise cause the Company to fail to qualify as a REIT; and (iii) any Transfer of Shares that, if effective, would result in the Shares being beneficially owned by fewer than 100 Persons (as determined under the principles of Section 856(a)(5) of the Code) shall be void *ab initio* and the intended transferee shall acquire no rights in such Shares. Any Person who Beneficially or Constructively Owns or attempts to Beneficially or Constructively Own Shares which causes or will cause a Person to Beneficially or Constructively Own Shares in excess or in violation of the above limitations must immediately notify the Company in writing (or, in the case of an attempted transaction, give at least 15 days prior written notice). If any of the restrictions on Transfer or ownership as set forth in (i) and (ii) above are violated, the Shares in excess or in violation of the above limitations will be automatically transferred to a Trustee of a Trust for the benefit of one or more Charitable Beneficiaries. In addition, the Company may redeem shares upon the terms and conditions specified by the Board in its sole discretion if the Board determines that ownership or a Transfer or other event may violate the restrictions described above. Furthermore, upon the occurrence of certain events, attempted Transfers in violation of the restrictions described above may be void *ab initio*. All capitalized terms in this notice have the meanings defined in the Company's charter, as the same may be amended from time to time, a copy of which, including the restrictions on Transfer and ownership, will be furnished to each holder of Shares on request and without charge. Requests for such a copy may be directed to the Secretary of the Company at its principal office.

(iii) **TRANSFER OF SHARES IN TRUST.**

(a) **OWNERSHIP IN TRUST.** Upon any purported Transfer or other event described in Section 5.7(ii)(a)(III) that would result in a transfer of Shares to a Trust, such Shares shall be transferred to the Trustee as trustee of a Trust for the exclusive benefit of one or more Charitable Beneficiaries. Such transfer to the Trustee shall be effective as of the close of business on the Business Day prior to the purported Transfer or other event that results in the transfer to the Trust pursuant to Section 5.7(ii)(a)(III). The Trustee shall be appointed by the Company and shall be a Person unaffiliated with the Company and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Company as provided in Section 5.7(iii)(f).

(b) **STATUS OF SHARES HELD BY THE TRUSTEE.** Shares held by the Trustee shall be issued and outstanding Shares. The Prohibited Owner shall have no rights in the shares held by the Trustee. The Prohibited Owner shall not benefit economically from ownership of any Shares held in trust by the Trustee, shall have no rights to dividends or other Distributions and shall not possess any rights to vote or other rights attributable to the Shares held in the Trust.

(c) **DIVIDEND AND VOTING RIGHTS.** The Trustee shall have all voting rights and rights to dividends or other Distributions with respect to Shares held in the Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary. Any dividend or other Distribution paid prior to the discovery by the Company that the Shares have been transferred to the Trustee shall be paid by the recipient of such dividend or other Distribution to the Trustee upon demand and any dividend or other Distribution authorized but unpaid shall be paid when due to the Trustee. Any dividend or other Distribution so paid to the Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to shares held in the Trust and, subject to Maryland law, effective as of the date that the Shares have been transferred to the Trustee, the Trustee shall have the authority (at the Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Owner prior to the discovery by the Company that the Shares have been transferred to the Trustee and (ii) to recast such vote in accordance with the desires of the Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Company has already taken irreversible corporate action, then the Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Section 5.7, until the Company has received notification that Shares have been transferred into a Trust, the Company shall be entitled to rely on its stock transfer and other stockholder records for purposes of preparing lists of Stockholders entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of Stockholders.

(d) **SALE OF SHARES BY TRUSTEE.** Within 20 days of receiving notice from the Company that Shares have been transferred to the Trust, the Trustee shall sell the Shares held in the Trust to a person, designated by the Trustee, whose ownership of the Shares will not violate the ownership limitations set forth in Section 5.7(ii)(a)(I) or (II). Upon such sale, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 5.7(iii)(d). The Prohibited Owner shall receive the lesser of (1) the price paid by the Prohibited Owner for the Shares or, if the Prohibited Owner did not give value for the Shares in connection with the event causing the Shares to be held in the Trust (e.g., in the case of a gift, devise or other such transaction), the Market Price of the Shares on the day of the event causing the Shares to be held in the Trust and (2) the price per Share received by the Trustee from the sale or other disposition of the Shares held in the Trust. The Trustee may reduce the amount payable to the Prohibited Owner by the amount of dividends and other Distributions which have been paid to the Prohibited Owner and are owed by the Prohibited Owner to the Trustee pursuant to Section 5.7(iii)(c). Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be immediately paid to the Charitable Beneficiary. If, prior to the discovery by the Company that Shares have been transferred to the Trustee, such Shares are sold by a Prohibited Owner, then (i) such Shares shall be deemed to have been sold on behalf of the Trust and (ii) to the extent that the Prohibited Owner received an amount for such Shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 5.7, such excess shall be paid to the Trustee upon demand.

(e) **PURCHASE RIGHT IN STOCK TRANSFERRED TO THE TRUSTEE.** Shares transferred to the Trustee shall be deemed to have been offered for sale to the Company, or its designee, at a price per Share equal to the lesser of (i) the price per Share in the transaction that resulted in such transfer to the Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Company, or its designee, accepts such offer. The Company may reduce the amount payable to the Prohibited Owner by the amount of dividends and other Distributions which has been paid to the Prohibited Owner and is owed by the Prohibited Owner to the Trustee pursuant to Section 5.7(iii)(c). The Company may pay the amount of such reduction to the Trustee for the benefit of the Charitable Beneficiary. The Company shall have the right to accept such offer until the Trustee has sold the Shares held in the Trust pursuant to Section 5.7(iii)(d). Upon such a sale to the Company, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Trustee shall distribute the net proceeds of the sale to the Prohibited Owner.

(f) **DESIGNATION OF CHARITABLE BENEFICIARIES.** By written notice to the Trustee, the Company shall designate one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Trust such that (i) the Shares held in the Trust would not violate the restrictions set forth in Section 5.7(ii)(a)(I) or (II) in the hands of such Charitable Beneficiary and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

SECTION 5.8 SETTLEMENTS. Nothing in Section 5.7 shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any provision of Sections 5.7, and any transfer in such a transaction shall be subject to all of the provisions and limitations set forth in Section 5.7.

SECTION 5.9 SEVERABILITY. If any provision of Section 5.7 or any application of any such provision is determined to be void, invalid or unenforceable by any court having jurisdiction over the issue, the validity and enforceability of the remaining provisions of Section 5.7 shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

SECTION 5.10 ENFORCEMENT. The Company is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of Section 5.7.

SECTION 5.11 NON-WAIVER. No delay or failure on the part of the Company or the Board in exercising any right hereunder shall operate as a waiver of any right of the Company or the Board, as the case may be, except to the extent specifically waived in writing.

SECTION 5.12 PREEMPTIVE AND APPRAISAL RIGHTS. Except as may be provided by the Board in setting the terms of classified or reclassified Shares pursuant to Section 5.4 or as may otherwise be provided by contract approved by the Board, no holder of Shares shall, as such holder, have any preemptive right to purchase or subscribe for any additional Shares or any other security of the Company which it may issue or sell. Holders of Shares shall not be entitled to exercise any rights of an objecting stockholder provided for under Title 3, Subtitle 2 of the MGCL or any successor statute unless the Board, upon the affirmative vote of a majority of the Board, shall determine that such rights apply, with respect to all or any classes or series of Shares, to one or more transactions occurring after the date of such determination in connection with which holders of such Shares would otherwise be entitled to exercise such rights.

ARTICLE VI BOARD OF DIRECTORS

SECTION 6.1 NUMBER OF DIRECTORS. The number of Directors of the Company shall initially be two, which number may be increased or decreased from time to time only by the Board pursuant to the Bylaws; but shall never be less than the minimum required by the MGCL. The names of the initial Directors who shall serve until the first annual meeting of Stockholders and until their successors are duly elected and qualify are:

Alan D. Gold
Gary A. Kreitzer

The Board may increase the number of Directors and may fill any vacancy, whether resulting from an increase in the number of Directors or otherwise, on the Board in the manner provided in the Bylaws.

The Company elects, at such time as it becomes eligible under Section 3-802 of the MGCL to make the election provided for under Section 3-804(c) of the MGCL, that, except as may be provided by the Board in setting the terms of any class or series of shares of Preferred Stock, any and all vacancies on the Board may be filled only by the affirmative vote of a majority of the remaining Directors in office, even if the remaining Directors do not constitute a quorum, and any Director elected to fill a vacancy shall serve for the remainder of the full term of the directorship in which such vacancy occurred. No reduction in the number of Directors shall cause the removal of any Director from office prior to the expiration of his term.

SECTION 6.2 RESIGNATION OR REMOVAL. Any Director may resign by delivering notice to the Board, effective upon receipt by the Board of such notice or upon any future date specified in the notice. Subject to the rights of holders of one or more classes or series of shares of Preferred Stock, any Director or the entire Board may be removed from office at any time, but only for cause, and then only by the affirmative vote of stockholders entitled to cast at least two-thirds of the votes entitled to be cast generally in the election of Directors. For the purpose of this paragraph, “cause” shall mean, with respect to any particular Director, conviction of a felony or a final judgment of a court of competent jurisdiction holding that such director caused demonstrable, material harm to the Company through bad faith or active and deliberate dishonesty.

ARTICLE VII POWERS OF THE BOARD OF DIRECTORS

SECTION 7.1 GENERAL. The business and affairs of the Company shall be managed under the direction of the Board. The Charter shall be construed with a presumption in favor of the grant of power and authority to the Board. Any construction of the Charter or determination made in good faith by the Board concerning its powers and authority hereunder shall be conclusive. The enumeration and definition of particular powers of the Board included in this Article VII shall in no way be limited or restricted by reference to or inference from the terms of this or any other provision of the Charter or construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board under the general laws of the State of Maryland as now or hereafter in force.

SECTION 7.2 AUTHORIZATION BY BOARD OF STOCK ISSUANCE. The Board may authorize the issuance from time to time of Shares of any class or series, whether now or hereafter authorized, or Securities or rights convertible into Shares of any class or series, whether now or hereafter authorized, for such consideration as the Board may deem advisable (or without consideration in the case of a stock split or stock dividend), subject to such restrictions or limitations, if any, as may be set forth in the MGCL, the Charter or the Bylaws.

SECTION 7.3 REIT QUALIFICATION. If the Company elects to qualify for federal income tax treatment as a REIT, the Board shall take such actions as are necessary or appropriate to preserve the status of the Company as a REIT; *provided, however*, if the Board determines that it is no longer in the best interests of the Company to continue to be qualified as a REIT, the Board may revoke or otherwise terminate the Company’s REIT election pursuant to Section 856(g) of the Code. The Board also may determine that compliance with any restriction or limitation on stock ownership and transfers set forth in Section 5.7 hereof is no longer required for REIT qualification.

SECTION 7.4 DETERMINATIONS BY BOARD. The determination as to any of the following matters, made by or pursuant to the direction of the Board consistent with the Charter, shall be final and conclusive and shall be binding upon the Company and every holder of Shares: the amount of the net income of the Company for any period and the amount of assets at any time legally available for the payment of dividends, redemption of Shares or the payment of other Distributions on Shares; the amount of paid-in surplus, net assets, other surplus, annual or other cash flow, funds from operations (and any variation thereof), net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); any interpretation or resolution of any ambiguity with respect to any provision of the Charter (including the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or other Distributions, qualifications or terms or conditions of redemption of any class or series of Shares) or the Bylaws; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Company or any Shares; the number of Shares of any class of the Company; any matter relating to the acquisition, holding and disposition of any assets by the Company; any interpretation of the terms and conditions of one or more of the agreements with any persons; or any other matter relating to the business and affairs of the Company or required or permitted by applicable law, the Charter or Bylaws or otherwise to be determined by the Board; *provided, however*, that any determination by the Board as to any of the preceding matters shall not render invalid or improper any action taken or omitted prior to such determination and no Director shall be liable for making or failing to make such a determination.

**ARTICLE VIII
EXTRAORDINARY ACTIONS**

Except as specifically provided in Section 6.2 hereof (relating to removal of Directors) and in the last sentence of Article X, notwithstanding any provision of law permitting or requiring any action to be taken or approved by the affirmative vote of the holders of Shares entitled to cast a greater number of votes, any such action shall be effective and valid if declared advisable by the Board and taken or approved by the affirmative vote of holders of Shares entitled to cast a majority of all the votes entitled to be cast on the matter.

**ARTICLE IX
LIABILITY OF STOCKHOLDERS, DIRECTORS AND OFFICERS**

SECTION 9.1 LIMITATION OF DIRECTOR AND OFFICER LIABILITY; INDEMNIFICATION.

(a) To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of directors and officers of a corporation, no present or former Director or officer of the Company shall be liable to the Company or its Stockholders for money damages. Neither the amendment nor repeal of this Section 9.1(a), nor the adoption or amendment of any other provision of the Charter or Bylaws inconsistent with this Section 9.1(a), shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

(b) The Company shall have the power, to the maximum extent permitted by Maryland law in effect from time to time, to obligate itself to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (i) any individual who is a present or former Director or officer of the Company or (ii) any individual who, while a Director or officer of the Company and at the request of the Company, serves or has served as a director, officer, partner, member, manager or trustee of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his or her service in that capacity. The Company shall have the power, with the approval of the Board, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Company in any of the capacities described in (i) or (ii) above and to any employee or agent of the Company or a predecessor of the Company.

ARTICLE X AMENDMENTS

The Company reserves the right from time to time to make any amendment to the Charter, now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in the Charter, of any outstanding Shares. All rights and powers conferred by the Charter on Stockholders, Directors and officers are granted subject to this reservation. Except as otherwise provided in the next sentence and except for those amendments permitted to be made without Stockholder approval under Maryland law or by specific provision in the Charter, any amendment to the Charter shall be valid only if declared advisable by the Board and approved by the affirmative vote of stockholders entitled to cast a majority of all the votes entitled to be cast on the matter. However, any amendment to the second sentence of Section 6.2 hereof or to this sentence of the Charter shall be valid only if declared advisable by the Board and approved by the affirmative vote of stockholders entitled to cast at least two-thirds of all votes entitled to be cast on the matter.

THIRD: The amendment and restatement of the Charter as herein set forth has been duly approved by a majority of the Board of Directors, and the amendment of the Charter as herein set forth is limited to a change expressly authorized by Section 2-605 of the MGCL to be made without action by the stockholders of the Company.

FOURTH: The current address of the principal office of the Company is as set forth in Article III of the foregoing amendment and restatement of the Charter.

FIFTH: The name and address of the Company's current resident agent are as set forth in Article III of the foregoing amendment and restatement of the Charter.

SIXTH: There are six directors of the Company. The names of the directors currently in office are as follows:

Alan D. Gold
Paul E. Smithers
Gary A. Kreitzer
Gary M. Malino
Scott Shoemaker
David Stecher

SEVENTH: The foregoing amendment and restatement to the Charter of the Company does not increase the authorized capital stock of the Company.

EIGHTH: The undersigned acknowledges these Second Articles of Amendment and Restatement to be the corporate act of the Company and, as to all matters or facts required to be verified under oath, the undersigned acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

NINTH: These Second Articles of Amendment and Restatement shall become effective as of the later of (i) the time the State Department of Assessments and Taxation of Maryland accepts these Articles of Amendment for record, or (ii) 5:00 p.m. (Eastern Time) on January 26, 2017.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Innovative Industrial Properties, Inc. has caused these Second Articles of Amendment and Restatement to be signed in its name and on its behalf by its Chief Executive Officer, and attested by its Secretary, on this 24th day January, 2017.

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

By: /s/ Paul E. Smithers
Paul E. Smithers, Chief Executive Officer and President

Attest:

By: /s/ Brian J. Wolfe
Brian J. Wolfe, Secretary

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

ARTICLES SUPPLEMENTARY

690,000 SHARES OF

9.00% SERIES A CUMULATIVE REDEEMABLE PREFERRED STOCK

October 16, 2017

Innovative Industrial Properties, Inc., a Maryland corporation (the “**Company**”), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: Under a power contained in Article V of the charter of the Company (the “**Charter**”) and Section 2-105 of the Maryland General Corporation Law, the Board of Directors of the Company (the “**Board**”) and a duly authorized committee thereof, by duly adopted resolutions, classified 690,000 shares of authorized but unissued preferred stock, \$0.001 par value per share, of the Company as shares of 9.00% Series A Cumulative Redeemable Preferred Stock, with the following preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption (which, upon any restatement of the Charter, may be made a part of Article V thereof, with any necessary or appropriate changes to the numeration or lettering of the sections or subsections hereof). Capitalized terms used but not defined herein shall have the meanings given to them in the Charter.

1. **Designation and Number.** A series of Preferred Stock, designated the 9.00% Series A Cumulative Redeemable Preferred Stock (the “**Series A Preferred Stock**”), is hereby established. The number of authorized shares of Series A Preferred Stock shall be 690,000.

2. **Rank.** The Series A Preferred Stock, with respect to dividend rights and rights upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, will rank (a) senior to all classes or series of Common Stock and to any other class or series of capital stock of the Company expressly designated as ranking junior to the Series A Preferred Stock with respect to priority of payment of dividends and other distributions or rights upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company; (b) on parity with any class or series of capital stock of the Company expressly designated as ranking on parity with the Series A Preferred Stock with respect to priority of payment of dividends and other distributions or rights upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (the “**Parity Preferred Stock**”); and (c) junior to any class or series of capital stock of the Company expressly designated as ranking senior to the Series A Preferred Stock with respect to priority of payment of dividends and other distributions or rights upon voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company (the “**Senior Stock**”). The term “capital stock” does not include convertible or exchangeable debt securities, which will rank senior to the Series A Preferred Stock prior to conversion or exchange. The Series A Preferred Stock will also rank junior in right of payment to the Company's other existing and future debt obligations.

3. Dividends.

(a) Subject to the preferential rights of the holders of any class or series of capital stock of the Company ranking senior to the Series A Preferred Stock with respect to dividend rights, holders of shares of the Series A Preferred Stock are entitled to receive, when, as and if authorized by the Board and declared by the Company out of funds legally available for the payment of dividends, cumulative cash dividends at the rate of 9.00% per annum of the \$25.00 liquidation preference per share of the Series A Preferred Stock (equivalent to the fixed annual amount of \$2.25 per share of the Series A Preferred Stock). Dividends on the Series A Preferred Stock shall accrue and be cumulative from and including the date of original issue (the “**Original Issue Date**”) and shall be payable to holders quarterly in arrears on each Dividend Payment Date (as defined below), commencing January 16, 2018; provided, however, that if any Dividend Payment Date is not a Business Day (as defined below), then the dividend that would otherwise have been payable on such Dividend Payment Date may be paid on the next succeeding Business Day, with the same force and effect as if paid on such Dividend Payment Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Dividend Payment Date to such next succeeding Business Day. The amount of any dividend payable on the Series A Preferred Stock for any Dividend Period (as defined below) shall be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends will be payable to holders of record as they appear in the stockholder records of the Company at the close of business on the applicable Dividend Record Date (as defined below). Notwithstanding any provision to the contrary contained herein, each outstanding share of Series A Preferred Stock shall be entitled to receive a dividend with respect to any Dividend Record Date equal to the dividend paid with respect to each other share of Series A Preferred Stock that is outstanding on such date. “**Dividend Record Date**” shall mean the date designated by the Board as the record date for the payment of dividends that is not more than 35 and not fewer than 10 days prior to the applicable Dividend Payment Date. “**Dividend Payment Date**” shall be the 15th day of January, April, July and October of each year. “**Dividend Period**” shall mean the respective periods commencing on and including the 15th day of January, April, July and October of each year and ending on and including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period, which shall commence on the Original Issue Date and end on and include January 14, 2018, and other than the Dividend Period during which any shares of Series A Preferred Stock shall be redeemed pursuant to Section 5 or Section 6, which shall end on and include the day preceding the redemption date with respect to the shares of Series A Preferred Stock being redeemed). The term “**Business Day**” shall mean each day, other than a Saturday or a Sunday, which is not a day on which banking institutions in New York, New York are authorized or required by law, regulation or executive order to close.

(b) Notwithstanding anything contained herein to the contrary, dividends on the Series A Preferred Stock shall accrue whether or not the Company has earnings, whether or not there are funds legally available for the payment of such dividends, and whether or not such dividends are authorized by the Board or declared by the Company.

(c) Except as provided in Section 3(d) below, no dividends shall be declared and paid or declared and set apart for payment, and no other distribution of cash or other property may be declared and made, directly or indirectly, on or with respect to, any shares of Common Stock or shares of any other class or series of capital stock of the Company ranking, as to dividends, on parity with or junior to the Series A Preferred Stock (other than a dividend paid in shares of Common Stock or in shares of any other class or series of capital stock ranking junior to the Series A Preferred Stock as to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company) for any period, nor shall any shares of Common Stock or any other shares of any other class or series of capital stock of the Company ranking, as to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company, on parity with or junior to the Series A Preferred Stock be redeemed, purchased or otherwise acquired for any consideration, nor shall any funds be paid or made available for a sinking fund for the redemption of such shares, and no other distribution of cash or other property may be made, directly or indirectly, on or with respect thereto by the Company (except by conversion into or exchange for other shares of any class or series of capital stock of the Company ranking junior to the Series A Preferred Stock as to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company, and except for the acquisition of shares made pursuant to the provisions of Article V of the Charter or Section 9 hereof and the purchase or acquisition of any other class or series of capital stock of the Company ranking on parity with the Series A Preferred Stock as to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series A Preferred Stock), unless full cumulative dividends on the Series A Preferred Stock for all past Dividend Periods that have ended shall have been or contemporaneously are (i) declared and paid in cash or (ii) declared and a sum sufficient for the payment thereof is set apart for such payment.

(d) When dividends are not paid in full (and a sum sufficient for such full payment is not so set apart) on the Series A Preferred Stock and the shares of any other class or series of capital stock ranking, as to dividends, on parity with the Series A Preferred Stock, all dividends declared upon the Series A Preferred Stock and each such other class or series of capital stock ranking, as to dividends, on parity with the Series A Preferred Stock shall be declared pro rata, so that the amount of dividends declared per share of Series A Preferred Stock and such other class or series of capital stock shall in all cases bear to each other the same ratio that accrued dividends per share on the Series A Preferred Stock and such other class or series of capital stock (which shall not include any accrual in respect of unpaid dividends on such other class or series of capital stock for prior dividend periods if such other class or series of capital stock does not have a cumulative dividend) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Series A Preferred Stock which may be in arrears.

(e) Holders of shares of Series A Preferred Stock shall not be entitled to any dividend, whether payable in cash, property or shares of capital stock, in excess of full cumulative dividends on the Series A Preferred Stock as provided herein. Any dividend payment made on the Series A Preferred Stock shall first be credited against the earliest accrued but unpaid dividends due with respect to such shares which remain payable. Accrued but unpaid dividends on the Series A Preferred Stock will accrue as of the Dividend Payment Date on which they first become payable.

4. Liquidation Preference. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company, before any distribution or payment shall be made to holders of shares of Common Stock or any other class or series of capital stock of the Company ranking, as to rights upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, junior to the Series A Preferred Stock, the holders of shares of Series A Preferred Stock shall be entitled to be paid out of the assets of the Company legally available for distribution to its stockholders, after payment of or provision for the debts and other liabilities of the Company, a liquidation preference of \$25.00 per share of Series A Preferred Stock, plus an amount per share equal to all accrued but unpaid dividends (whether or not authorized or declared) to, but not including, the date of payment. In the event that, upon such voluntary or involuntary liquidation, dissolution or winding up, the available assets of the Company are insufficient to pay the full amount of the liquidating distributions on all outstanding shares of Series A Preferred Stock and the corresponding amounts payable on all shares of other classes or series of capital stock of the Company ranking, as to rights upon liquidation, dissolution or winding up of the Company, on parity with the Series A Preferred Stock in the distribution of assets, then the holders of the Series A Preferred Stock and each such other class or series of shares of capital stock ranking, as to rights upon any voluntary or involuntary liquidation, dissolution or winding up of the Company, on parity with the Series A Preferred Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled. Written notice of any distribution in connection with such voluntary or involuntary liquidation, dissolution or winding up of the Company, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by first class mail, postage pre-paid, not fewer than 30 nor more than 60 days prior to the payment date stated therein, to each record holder of shares of Series A Preferred Stock at the respective addresses of such holders as the same shall appear on the stock transfer records of the Company. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series A Preferred Stock will have no right or claim to any of the remaining assets of the Company. The consolidation or merger of the Company with or into any other corporation, trust or other entity, or the voluntary sale, lease, transfer or conveyance of all or substantially all of the Company's property or business, shall not be deemed to constitute a liquidation, dissolution or winding up of the affairs of the Company and no such advance notice shall be required. In determining whether a distribution (other than upon voluntary or involuntary liquidation) by dividend, redemption or other acquisition of shares of capital stock of the Company or otherwise is permitted under the MGCL, no effect shall be given to amounts that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of holders of the Series A Preferred Stock.

5. Optional Redemption by the Company.

(a) Shares of Series A Preferred Stock shall not be redeemable prior to October 19, 2022, except as set forth in Section 6 below or to qualify or to preserve the qualification of the Company as a REIT.

(b) On and after October 19, 2022, the Company, at its option upon not fewer than 30 and not more than 60 days' written notice, may redeem the Series A Preferred Stock, in whole or in part, at any time or from time to time, for cash at a redemption price of \$25.00 per share, plus an amount equal to all accrued but unpaid dividends (whether or not authorized or declared) thereon to, but not including, the date fixed for redemption, without interest, to the extent the Company has funds legally available therefor (the "**Optional Redemption Right**"). If fewer than all of the outstanding shares of Series A Preferred Stock are to be redeemed, the shares of Series A Preferred Stock to be redeemed shall be redeemed pro rata (as nearly as may be practicable without creating fractional shares) by lot, or by any other equitable method that the Company determines will not violate the Series A Ownership Limit (as defined in Section 9 below). If redemption is to be by lot and, as a result, any holder of shares of Series A Preferred Stock, other than a holder of shares of Series A Preferred Stock that has received an exemption from the Series A Ownership Limit, would have actual ownership, Beneficial Ownership or Constructive Ownership in excess of the Series A Ownership Limit, because such holder's shares of Series A Preferred Stock were not redeemed, or were only redeemed in part, then, except as otherwise provided in the Charter, the Company shall redeem the requisite number of shares of Series A Preferred Stock of such holder such that no holder will own Series A Preferred Stock in excess of the Series A Ownership Limit, subsequent to such redemption. Holders of Series A Preferred Stock to be redeemed shall surrender such Series A Preferred Stock at the place, or in accordance with the book-entry procedures, designated in the notice of redemption and shall be entitled to the redemption price of \$25.00 per share, plus an amount equal to all accrued but unpaid dividends thereon, payable upon such redemption following such surrender. If (i) notice of redemption of any shares of Series A Preferred Stock has been given (in the case of a redemption of the Series A Preferred Stock other than to qualify or preserve the qualification of the Company as a REIT), (ii) the funds necessary for such redemption have been set apart by the Company in trust for the benefit of the holders of any shares of Series A Preferred Stock so called for redemption and (iii) irrevocable instructions have been given to pay the redemption price of \$25.00 per share plus an amount equal to all accrued but unpaid dividends thereon, then from and after the redemption date, dividends shall cease to accrue on such shares of Series A Preferred Stock, such shares of Series A Preferred Stock shall no longer be deemed outstanding, and all rights of the holders of such shares of Series A Preferred Stock shall terminate, except the right to receive the redemption price of \$25.00 per share plus an amount equal to all accrued but unpaid dividends thereon payable upon such redemption, without interest. So long as full cumulative dividends on the Series A Preferred Stock for all past Dividend Periods that have ended shall have been or contemporaneously are declared and paid in cash or declared and a sum sufficient for the payment thereof is set apart for payment, nothing herein shall prevent or restrict the Company's right or ability to purchase, from time to time, either at a public or a private sale, all or any part of the Series A Preferred Stock at such price or prices as the Company may determine, subject to the provisions of applicable law, including the repurchase of shares of Series A Preferred Stock in open-market transactions and individual purchases at such prices as the Company negotiates, in each case as duly authorized by the Board.

(c) In the event of any redemption of the Series A Preferred Stock in order to qualify or preserve the qualification of the Company as a REIT, such redemption shall be made in accordance with the terms and conditions set forth in this Section 5. If the Company calls for redemption any shares of Series A Preferred Stock pursuant to and in accordance with this Section 5(c), then the redemption price for such shares will be an amount in cash equal to \$25.00 per share together with all accrued and unpaid dividends to, but not including, the date fixed for redemption.

(d) Unless full cumulative dividends on all shares of Series A Preferred Stock for all past Dividend Periods that have ended shall have been or contemporaneously are (i) authorized, declared and paid in cash or (ii) declared and a sum sufficient for the payment thereof is set apart for payment, no shares of Series A Preferred Stock shall be redeemed pursuant to the Optional Redemption Right or the Special Optional Redemption Right (as defined in Section 6 below) unless all outstanding shares of Series A Preferred Stock are simultaneously redeemed, and the Company shall not purchase or otherwise acquire, directly or indirectly, any shares of Series A Preferred Stock or any class or series of capital stock of the Company ranking, as to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company, on parity with or junior to the Series A Preferred Stock (except by conversion into or exchange for shares of capital stock of the Company ranking, as to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company, junior to the Series A Preferred Stock); provided, however, that the foregoing shall not prevent the purchase of Series A Preferred Stock, or any other class or series of capital stock of the Company ranking, as to payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company, on parity with or junior to the Series A Preferred Stock, by the Company pursuant to the Charter in order to ensure that the Company qualifies or remains qualified as a REIT, or the purchase or acquisition of Series A Preferred Stock or Parity Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Series A Preferred Stock.

(e) Notice of redemption pursuant to the Optional Redemption Right shall be mailed by the Company, postage prepaid, not fewer than 30 nor more than 60 days prior to the redemption date, addressed to the respective holders of record of the Series A Preferred Stock to be redeemed at their respective addresses as they appear on the transfer records maintained by the Company's transfer agent. No failure to give such notice or defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series A Preferred Stock except as to the holder to whom such notice was defective or not given; provided that, notice given to the last address of record shall be deemed to be valid notice. In addition to any information required by law or by the applicable rules of any exchange upon which the Series A Preferred Stock may be listed or admitted to trading, each such notice shall state: (i) the redemption date; (ii) the redemption price; (iii) the number of shares of Series A Preferred Stock to be redeemed; (iv) the procedures of The Depository Trust Company ("**DTC**") for book entry transfer of shares of Series A Preferred Stock for payment of the redemption price; (v) that dividends on the shares of Series A Preferred Stock to be redeemed will cease to accrue on such redemption date; and (vi) that payment of the redemption price plus an amount equal to all accrued but unpaid dividends thereon will be made upon book entry transfer of such Series A Preferred Stock in compliance with DTC's procedures. If fewer than all of the shares of Series A Preferred Stock held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series A Preferred Stock held by such holder to be redeemed or the method for determining such number. Notwithstanding anything else to the contrary herein, the Company shall not be required to provide notice to the holder of Series A Preferred Stock in the event such holder's Series A Preferred Stock is redeemed in order for the Company to qualify or to maintain its qualification as a REIT.

(f) Any redemption pursuant to this Section 5 may be made conditional on such factors as may be determined by the Board and set forth in the Company's notice of redemption.

(g) If a redemption date falls after a Dividend Record Date and on or prior to the corresponding Dividend Payment Date, each holder of Series A Preferred Stock at the close of business on such Dividend Record Date shall be entitled to the dividend payable on such shares on the corresponding Dividend Payment Date, notwithstanding the redemption of such shares on or prior to such Dividend Payment Date, and each holder of Series A Preferred Stock that surrenders its shares on such redemption date shall be entitled to an amount equal to the dividends accruing after the end of the Dividend Period to which such Dividend Payment Date relates, up to, but not including, the redemption date. Except as provided herein, the Company shall make no payment or allowance for unpaid dividends, whether or not in arrears, on Series A Preferred Stock for which a notice of redemption pursuant to the Optional Redemption Right has been given.

6. Special Optional Redemption by the Company.

(a) Upon the occurrence of a Change of Control/Delisting (as defined below), the Company may, at its option, upon written notice mailed by the Company, postage pre-paid, not fewer than 30 nor more than 60 days prior to the redemption date and addressed to the holders of record of the Series A Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Company, redeem shares of the Series A Preferred Stock, in whole or in part within 120 days after the first date on which such Change of Control/Delisting occurred, for cash at a redemption price of \$25.00 per share plus an amount equal to all accrued but unpaid dividends thereon to, but not including, the redemption date (the "**Special Optional Redemption Right**"). No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Series A Preferred Stock except as to the holder to whom notice was defective or not given. If, prior to the Change of Control Conversion/Delisting Conversion Date (as defined below), the Company has provided or provides notice of redemption with respect to the Series A Preferred Stock (whether pursuant to the Optional Redemption Right or the Special Optional Redemption Right), the holders of shares of Series A Preferred Stock will not have the conversion right described below in Section 7 with respect to shares of Series A Preferred Stock subject to such notice.

A "**Change of Control/Delisting**" is when, after the original issuance of the Series A Preferred Stock, any of the following has occurred and is continuing:

(i) the acquisition by any person, including any syndicate or group deemed to be a “person” under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of stock of the Company entitling that person to exercise more than 50% of the total voting power of all stock of the Company entitled to vote generally in the election of the Board (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition); and

(ii) following the closing of any transaction referred to in (i) above, neither the Company nor the acquiring or surviving entity has a class of common securities (or American Depositary Receipts representing such securities) listed on the New York Stock Exchange (the “**NYSE**”), the NYSE American LLC (“**NYSE American**”), or the NASDAQ Stock Market (“**NASDAQ**”), or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE American or NASDAQ.

(b) In addition to any information required by law or by the applicable rules of any exchange upon which the Series A Preferred Stock may be listed or admitted to trading, each notice of redemption of Series A Preferred Stock pursuant to this Section 6 shall state: (i) the redemption date; (ii) the redemption price; (iii) the number of shares of Series A Preferred Stock to be redeemed; (iv) the procedures of DTC for book entry transfer of shares of Series A Preferred Stock for payment of the redemption price; (v) that dividends on the shares of Series A Preferred Stock to be redeemed will cease to accrue on such redemption date; (vi) that payment of the redemption price plus an amount equal to all accrued but unpaid dividends thereon will be made upon book entry transfer of such Series A Preferred Stock in compliance with DTC’s procedures; (vii) that the Series A Preferred Stock is being redeemed pursuant to the Special Optional Redemption Right in connection with the occurrence of a Change of Control/Delisting and a brief description of the transaction or transactions constituting such Change of Control/Delisting; and (viii) that the holders of the Series A Preferred Stock to which the notice relates will not be able to tender such Series A Preferred Stock for conversion in connection with the Change of Control/Delisting and each share of Series A Preferred Stock tendered for conversion that is selected, prior to the Change of Control/Delisting Conversion Date, for redemption will be redeemed on the related date of redemption instead of converted on the Change of Control/Delisting Conversion Date. If fewer than all of the shares of Series A Preferred Stock held by any holder are to be redeemed, the notice mailed to such holder shall also specify the number of shares of Series A Preferred Stock held by such holder to be redeemed or the method for determining such number. In this case, the Company shall determine the number of shares of Series A Preferred Stock to be redeemed as described in Section 5(b) above.

(c) If the Company has given a notice of redemption pursuant to the Special Optional Redemption Right and has set apart sufficient funds for the redemption in trust for the benefit of the holders of the Series A Preferred Stock called for redemption, then from and after the redemption date, such shares of Series A Preferred Stock shall be treated as no longer being outstanding, no further dividends shall accrue and all other rights of the holders of such shares of Series A Preferred Stock shall terminate. The holders of such shares of Series A Preferred Stock shall retain their right to receive the redemption price per share plus an amount equal to all accrued but unpaid dividends to, but not including, the redemption date, without interest. So long as full cumulative dividends on the Series A Preferred Stock for all past Dividend Periods that have ended shall have been or contemporaneously are declared and paid in cash or declared and a sum sufficient for the payment thereof is set apart for payment, nothing herein shall prevent or restrict the Company’s right or ability to purchase, from time to time, either at a public or a private sale, all or any part of the Series A Preferred Stock at such price or prices as the Company may determine, subject to the provisions of applicable law, including the repurchase of shares of Series A Preferred Stock in open-market transactions and individual purchases at such prices as the Company negotiates, in each case as duly authorized by the Board.

(d) The holders of Series A Preferred Stock at the close of business on a Dividend Record Date shall be entitled to receive the dividend payable with respect to the Series A Preferred Stock on the corresponding Dividend Payment Date notwithstanding the redemption of the Series A Preferred Stock pursuant to the Special Optional Redemption Right between such Dividend Record Date and the corresponding Dividend Payment Date or the Company’s default in the payment of the dividend due. Except as provided herein, the Company shall make no payment or allowance for unpaid dividends, whether or not in arrears, on Series A Preferred Stock for which a notice of redemption pursuant to the Special Optional Redemption Right has been given.

7. Conversion Right Upon a Change of Control/Delisting.

(a) Upon the occurrence of a Change of Control/Delisting, each holder of Series A Preferred Stock shall have the right, unless, prior to the Change of Control/ Delisting Conversion Date, the Company has provided or provides notice of election to redeem the Series A Preferred Stock in whole or in part pursuant to the Optional Redemption Right or the Special Optional Redemption Right, to convert some or all of the shares of Series A Preferred Stock held by such holder (the “**Change of Control/Delisting Conversion Right**”), on a date specified by the Company that can be no earlier than 20 days and no later than 35 days following the date of delivery of the Change of Control/Delisting Company Notice (as defined below) (the “**Change of Control/Delisting Conversion Date**”), into a number of shares of Common Stock per share of Series A Preferred Stock (the “**Common Stock Conversion Consideration**”) equal to the lesser of (A) the quotient obtained by dividing (i) the sum of (x) the liquidation preference amount of \$25.00 per share of Series A Preferred Stock, plus (y) the amount of any accrued but unpaid dividends thereon (whether or not declared) to, but not including, the Change of Control/Delisting Conversion Date (unless the Change of Control/Delisting Conversion Date is after a Dividend Record Date and prior to the corresponding Dividend Payment Date, in which case no additional amount for such accrued but unpaid dividend will be included in this sum) by (ii) the Common Stock Price (as defined herein), and (B) 2.617801 (the “**Share Cap**”), subject to the following:

(i) The Share Cap shall be subject to pro rata adjustments for any stock splits (including those effected pursuant to a distribution of shares of Common Stock), subdivisions or combinations (in each case, a “**Share Split**”) with respect to the shares of Common Stock as follows: the adjusted Share Cap as the result of a Share Split shall be the number of shares of Common Stock that is equivalent to the product of (i) the Share Cap in effect immediately prior to such Share Split multiplied by (ii) a fraction, the numerator of which is the number of shares of Common Stock outstanding after giving effect to such Share Split and the denominator of which is the number of shares of Common Stock outstanding immediately prior to such Share Split.

(ii) In the case of a Change of Control/Delisting as a result of which holders of shares of Common Stock are entitled to receive consideration other than solely cash, including other securities, other property or assets (including cash or any combination thereof) with respect to or in exchange for shares of Common Stock (the “**Alternative Form Consideration**”), a holder of shares of Series A Preferred Stock shall be entitled thereafter to convert (subject to the Optional Redemption Right or the Special Optional Redemption Right) such shares of Series A Preferred Stock not into shares of Common Stock but solely into the kind and amount of Alternative Form Consideration which the holder of shares of Series A Preferred Stock would have owned or been entitled to receive upon such Change of Control/Delisting as if such holder of shares of Series A Preferred Stock then held the Common Stock Conversion Consideration immediately prior to the effective time of the Change of Control/Delisting (the “**Alternative Conversion Consideration**”); and the Common Stock Conversion Consideration or the Alternative Conversion Consideration, as may be applicable to a Change of Control/Delisting, shall be referred to herein as the “**Conversion Consideration**”).

(iii) If the holders of shares of Common Stock have the opportunity to elect the form of consideration to be received in such Change of Control/Delisting, the Conversion Consideration shall be deemed to be the kind and amount of consideration actually received by holders of a majority of shares of Common Stock that voted for such an election (if electing between two types of consideration) or holders of a plurality of shares of Common Stock that voted for such an election (if electing between more than two types of consideration), as the case may be, and shall be subject to any limitations to which all holders of shares of Common Stock are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Change of Control/Delisting.

(iv) As used herein, the term “**Common Stock Price**” shall mean (i) if the consideration to be received in the Change of Control/Delisting by holders of shares of Common Stock is solely cash, the amount of cash consideration per share of Common Stock; or (ii) if the consideration to be received in the Change of Control/Delisting by holders of the shares of Common Stock is other than solely cash, (x) the average of the closing sale prices per share of Common Stock (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) for the ten consecutive trading days immediately preceding, but not including, the effective date of the Change of Control/Delisting as reported on the principal U.S. securities exchange on which the shares of Common Stock are then traded, or (y) if the shares of Common Stock are not then listed for trading on a U.S. securities exchange, the average of the last quoted bid prices for the shares of Common Stock in the over-the-counter market as reported by OTC Markets Group, Inc. or a similar organization for the ten consecutive trading days immediately preceding, but not including, the effective date of the Change of Control/Delisting.

(b) Within 15 days following the occurrence of a Change of Control/Delisting, the Company shall provide to holders of shares of Series A Preferred Stock a notice of occurrence of the Change of Control/Delisting that describes the resulting Change of Control/Delisting Conversion Right (the “**Change of Control/Delisting Company Notice**”). A failure to give such Change of Control/Delisting Company Notice or any defect in the notice or in its mailing shall not affect the validity of the proceedings for the conversion of any shares of Series A Preferred Stock except as to the holder to whom the Change of Control/Delisting Company Notice was defective or not given. Each Change of Control/Delisting Company Notice shall state the following: (i) the events constituting the Change of Control/Delisting; (ii) the date of the Change of Control/Delisting; (iii) the last date and time by which the holders of shares of Series A Preferred Stock may exercise their Change of Control/Delisting Conversion Right; (iv) the method and period for calculating the Common Stock Price; (v) the Change of Control/Delisting Conversion Date; (vi) that if, prior to the Change of Control/Delisting Conversion Date, the Company has provided or provides notice of its election to redeem all or any portion of the shares of Series A Preferred Stock pursuant to Section 5 or Section 6 above, holders shall not be able to convert shares of Series A Preferred Stock designated for redemption and such shares shall be redeemed on the related redemption date, even if such shares have already been tendered for conversion pursuant to the Change of Control/Delisting Conversion Right; (vii) if applicable, the type and amount of Alternative Conversion Consideration entitled to be received per share of Series A Preferred Stock; (viii) the name and address of the paying agent and the conversion agent; and (ix) the procedures that the holders of share of Series A Preferred Stock must follow to exercise the Change of Control/Delisting Conversion Right.

(c) The Company shall issue a press release for publication on the Dow Jones & Company, Inc., Business Wire, PR Newswire or Bloomberg Business News (or, if such organizations are not in existence at the time of issuance of such press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public), or post a notice on the Company’s website, in any event prior to the opening of business on the first Business Day following any date on which the Company provides a Change of Control/Delisting Company Notice to the holders of shares of Series A Preferred Stock.

(d) In order to exercise the Change of Control/Delisting Conversion Right, a holder of shares of Series A Preferred Stock shall be required to deliver, on or before the close of business on the Change of Control/Delisting Conversion Date, the certificates (if any) or book entries representing the shares of Series A Preferred Stock to be converted, duly endorsed for transfer (if certificates are delivered), together with a completed written conversion notice, to the transfer agent. Such conversion notice shall state: (i) the relevant Change of Control/Delisting Conversion Date; (ii) the number of shares of Series A Preferred Stock to be converted; and (iii) that the shares of Series A Preferred Stock are to be converted pursuant to the Change of Control/Delisting Conversion Right set forth in this Section 7. Notwithstanding the foregoing, if the shares of Series A Preferred Stock are held in global form, such notice shall comply with applicable procedures of DTC.

(e) Holders of shares of Series A Preferred Stock may withdraw any notice of exercise of a Change of Control/Delisting Conversion Right (in whole or in part) by a written notice of withdrawal delivered to the Company’s transfer agent prior to 5:00 p.m., New York City time, on the Business Day prior to the Change of Control/Delisting Conversion Date. The notice of withdrawal must state: (i) the number of withdrawn shares of Series A Preferred Stock; (ii) if certificated shares of Series A Preferred Stock have been issued, the certificate numbers of the withdrawn shares of Series A Preferred Stock; and (iii) the number of shares of Series A Preferred Stock, if any, which remain subject to the conversion notice. Notwithstanding the foregoing, if the shares of Series A Preferred Stock are held in global form, the notice of withdrawal shall comply with applicable procedures of DTC.

(f) Shares of Series A Preferred Stock as to which the Change of Control/Delisting Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn shall be converted into the applicable Conversion Consideration in accordance with the Change of Control/Delisting Conversion Right on the Change of Control/Delisting Conversion Date, unless prior to the Change of Control/Delisting Conversion Date, the Company provided or provides notice of its election to redeem the Series A Preferred Stock pursuant to Section 5 or 6 above. If the Company elects to redeem shares of Series A Preferred Stock that would otherwise be converted into the applicable Conversion Consideration on a Change of Control/Delisting Conversion Date, such shares of Series A Preferred Stock shall not be so converted and the holders of such shares shall be entitled to receive on the applicable redemption date \$25.00 per share, plus an amount equal to any accrued and unpaid dividends thereon to, but not including, the redemption date.

(g) In connection with the exercise of any Change of Control/Delisting Conversion Right, the Company shall comply with all U.S. federal and state securities laws and stock exchange rules in connection with any conversion of shares of Series A Preferred Stock into shares of Common Stock. Notwithstanding anything to the contrary contained herein, no holder of shares of Series A Preferred Stock shall be entitled to convert such shares of Series A Preferred Stock for shares of Common Stock to the extent that receipt of such shares of Common Stock would cause such holder (or any other person) to Beneficially Own shares of Common Stock in excess of the Aggregate Share Ownership Limit or the Ownership Limit.

(h) No fractional shares of Common Stock shall be issued upon the conversion of the shares of Series A Preferred Stock in accordance with the Change of Control/Delisting Conversion Right. In lieu of fractional shares, holders of the shares of Series A Preferred Stock shall be entitled to receive the cash value of such fractional shares based on the Common Stock Price.

(i) The Company shall deliver all shares of Common Stock, cash (including, without limitation, cash in lieu of fractional shares of Common Stock) and any other property owing upon conversion no later than the third Business Day following the Change of Control/Delisting Conversion Date. Notwithstanding the foregoing, the persons entitled to receive any shares of Common Stock or other securities delivered upon conversion shall be deemed to have become the holders of record thereof as of the Change of Control/Delisting Conversion Date.

8. Voting Rights.

(a) Holders of the Series A Preferred Stock shall not have any voting rights, except as set forth in this Section 8.

(b) Whenever dividends on any shares of Series A Preferred Stock shall be in arrears for six or more quarterly periods, whether or not consecutive (a “**Preferred Dividend Default**”), the number of directors then constituting the Board shall be increased by two and the holders of shares of Series A Preferred Stock (voting separately as a class together with holders of the Parity Preferred Stock upon which like voting rights have been conferred and are exercisable (the “**Voting Preferred Stock**”)) shall be entitled to vote for the election of two additional directors of the Company (the “**Preferred Directors**”), until all unpaid dividends with respect to the Series A Preferred Stock and the Parity Preferred Stock for the past Dividend Periods that have ended shall have been fully declared and paid in cash.

(c) The Preferred Directors will be elected by a plurality of the votes cast in the election for a one-year term and each Preferred Director will serve until the next annual meeting of stockholders and until his or her successor is duly elected and qualified or until such Preferred Director’s right to hold the office terminates, whichever occurs earlier, subject to such Preferred Director’s earlier death, disqualification, resignation or removal. The election will take place at (i) either (A) a special meeting called in accordance with Section 8(d) below if the request is received more than 90 days before the date fixed for the Company’s next annual or special meeting of stockholders or (B) the next annual or special meeting of stockholders if the request is received within 90 days of the date fixed for the Company’s next annual or special meeting of stockholders, and (ii) at each subsequent annual meeting of stockholders, or special meeting held in place thereof, until all such dividends in arrears on the Series A Preferred Stock and Parity Preferred Stock have been paid in full. A dividend in respect of Series A Preferred Stock shall be considered timely made if made within two Business Days after the applicable Dividend Payment Date if at the time of such late payment date there shall not be any prior Dividend Periods in respect of which full dividends were not timely made at the applicable Dividend Payment Date.

(d) At any time when such voting rights shall have vested, a proper officer of the Company shall call or cause to be called, upon the written request of holders of record of at least 10% of the outstanding shares of Series A Preferred Stock and Voting Preferred Stock, a special meeting of the holders of Series A Preferred Stock and Voting Preferred Stock by mailing or causing to be mailed to such holders a notice of such special meeting to be held not fewer than ten nor more than 45 days after the date such notice is given. The record date for determining holders of the Series A Preferred Stock and Voting Preferred Stock entitled to notice of and to vote at such special meeting will be the close of business on the third Business Day preceding the day on which such notice is mailed. At any such annual or special meeting, all of the holders of the Series A Preferred Stock and Voting Preferred Stock, by plurality vote, voting together as a single class without regard to class or series will be entitled to elect two directors on the basis of one vote per \$25.00 of liquidation preference to which such Series A Preferred Stock and Voting Preferred Stock are entitled by their terms (excluding amounts in respect of accumulated and unpaid dividends) and not cumulatively. The holder or holders of one-third of the Series A Preferred Stock and Voting Preferred Stock voting as a single class then outstanding, present in person or by proxy, will constitute a quorum for the election of the Preferred Directors except as otherwise provided by law. Notice of all meetings at which holders of the Series A Preferred Stock and the Voting Preferred Stock shall be entitled to vote will be given to such holders at their addresses as they appear in the transfer records. At any such meeting or adjournment thereof in the absence of a quorum, subject to the provisions of any applicable law, a majority of the holders of the Series A Preferred Stock and Voting Preferred Stock voting as a single class present in person or by proxy shall have the power to adjourn the meeting for the election of the Preferred Directors, without notice other than an announcement at the meeting, until a quorum is present. If a Preferred Dividend Default shall terminate after the notice of a special meeting has been given but before such special meeting has been held, the Company shall, as soon as practicable after such termination, mail or cause to be mailed notice of such termination to holders of the Series A Preferred Stock and the Voting Preferred Stock that would have been entitled to vote at such special meeting.

(e) If and when all accrued dividends on such Series A Preferred Stock and all classes or series of Parity Preferred Stock for the past dividend periods that have ended shall have been fully paid, the right of the holders of Series A Preferred Stock and the Voting Preferred Stock to elect such additional two directors shall immediately cease (subject to re-vesting in the event of each and every Preferred Dividend Default), and the term and office of each Preferred Director so elected shall terminate and the entire Board of Directors shall be reduced accordingly. Any Preferred Director may be removed at any time with or without cause by the vote of, and shall not be removed otherwise than by the vote of, the holders of record of a majority of the outstanding Series A Preferred Stock and the Voting Preferred Stock (voting together as a single class). So long as a Preferred Dividend Default shall continue, any vacancy in the office of a Preferred Director may be filled by written consent of the Preferred Director remaining in office, or if none remains in office, by a vote of the holders of record of a majority of the outstanding Series A Preferred Stock and Voting Preferred Stock (voting together as a single class). Each of the Preferred Directors shall be entitled to one vote on any matter.

(f) So long as any shares of Series A Preferred Stock remain outstanding, in addition to any other vote or consent of holders of shares of the capital stock of the Company required by the Charter, the affirmative vote or consent of the holders of at least two-thirds of the shares outstanding at the time of Series A Preferred Stock and Voting Preferred Stock (voting together as a single class), either in writing or at a meeting, will be required to authorize, create or issue, or increase the number of authorized or issued shares of, any Senior Stock or reclassify any authorized shares of capital stock of the Company into such Senior Stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such Senior Stock. In addition, so long as any shares of Series A Preferred Stock remain outstanding, the affirmative vote or consent of the holders of at least two-thirds of the shares outstanding at the time of Series A Preferred Stock, either in writing or at a meeting, will be required to amend, alter or repeal the provisions of the Charter or the terms of the Series A Preferred Stock, whether by merger, consolidation, transfer or conveyance of all or substantially all of its assets or otherwise (an "Event"), so as to materially and adversely affect any right, preference, privilege or voting power of the Series A Preferred Stock; provided, however, with respect to the occurrence of any Event, so long as the Series A Preferred Stock remains outstanding with the terms thereof materially unchanged, taking into account that, upon the occurrence of an Event, the Company may not be the surviving entity, the occurrence of such Event shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting power of Series A Preferred Stock, and in such case such holders of Series A Preferred Stock shall not have any voting rights with respect to an Event; provided, further, that such vote or consent of the holders of Series A Preferred Stock shall not be required with respect to any such amendment, alteration or repeal that equally affects the terms of the Series A Preferred Stock and the Voting Preferred Stock, if such amendment, alteration or repeal is approved by the affirmative vote or consent of the holders of two-thirds of the shares of Series A Preferred Stock and the Voting Preferred Stock (voting together as a single class). Furthermore, if holders of shares of the Series A Preferred Stock shall receive the greater of the full trading price of the Series A Preferred Stock on the date of an Event or the \$25.00 per share liquidation preference pursuant to the occurrence of an Event, then such holders shall not have any voting rights with respect to such Event.

(g) So long as any shares of Series A Preferred Stock remain outstanding, the holders of shares of Series A Preferred Stock also shall have the exclusive right to vote on any amendment, alteration or repeal of the provisions of the Charter or the terms of the Series A Preferred Stock on which holders of Series A Preferred Stock are otherwise entitled to vote pursuant to the second sentence of Section 7(f) that would alter only the contract rights, as expressly set forth in the Charter, of the Series A Preferred Stock, and the holders of any other classes or series of the capital stock of the Company will not be entitled to vote on such an amendment, alteration or repeal. With respect to any amendment, alteration or repeal of the provisions of the Charter or the terms of the Series A Preferred Stock that equally affects the terms of the Series A Preferred Stock and the Voting Preferred Stock, so long as any shares of Series A Preferred Stock remain outstanding, the holders of shares of Series A Preferred Stock and the Voting Preferred Stock (voting together as a single class), also will have the exclusive right to vote on any amendment, alteration or repeal of the provisions of the Charter or the terms of the Series A Preferred Stock on which holders of Series A Preferred Stock are otherwise entitled to vote pursuant to the second sentence of Section 7(f) that would alter only the contract rights, as expressly set forth in the Charter, of the Series A Preferred Stock and the Voting Preferred Stock, and the holders of any other classes or series of the capital stock of the Company will not be entitled to vote on such an amendment, alteration or repeal.

(h) Holders of shares of Series A Preferred Stock shall not be entitled to vote with respect to (A) any increase in the total number of authorized shares of Common Stock or Preferred Stock of the Company, or (B) any issuance or increase in the number of authorized shares of Series A Preferred Stock or the creation or issuance of any other class or series of capital stock, or any issuance or increase in the number of authorized shares of any class or series of capital stock, in each case ranking on parity with or junior to the Series A Preferred Stock with respect to the payment of dividends and the distribution of assets upon liquidation, dissolution or winding up of the Company. Except as set forth herein, holders of the Series A Preferred Stock shall not have any voting rights with respect to, and the consent of the holders of the Series A Preferred Stock shall not be required for, the taking of any corporate action, including an Event, regardless of the effect that such corporate action or Event may have upon the powers, preferences, voting power or other rights or privileges of the Series A Preferred Stock.

(i) The foregoing voting provisions of this Section 8 shall not apply if, at or prior to the time when the act with respect to which such vote would otherwise be required shall be effected, all outstanding shares of Series A Preferred Stock shall have been redeemed or called for redemption upon proper procedures pursuant to these Articles Supplementary and sufficient funds, in cash, shall have been deposited in trust to effect such redemption.

(j) In any matter in which the Series A Preferred Stock may vote (as expressly provided herein), each share of Series A Preferred Stock shall be entitled to one vote per \$25.00 of liquidation preference.

9. Restrictions on Ownership and Transfer.

(a) As used herein, the following terms shall have the following meanings:

(i) **“Prohibited Series A Owner”** shall mean, with respect to any purported Transfer, any Person who, but for the provisions of Section 9(c), would Beneficially Own or Constructively Own shares of Series A Preferred Stock in violation of Section 9(b), and, if appropriate in the context, shall also mean any Person who would have been the record owner of shares of Series A Preferred Stock that the Prohibited Owner would have so owned.

(ii) “**Series A Beneficiary**” shall mean one or more beneficiaries of the Series A Trust as determined pursuant to Section 9(i), provided that each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

(iii) “**Series A Excepted Holder**” shall mean a holder of Series A Preferred Stock for whom a Series A Excepted Holder Limit is created by the Board pursuant to Section 9(n).

(iv) “**Series A Excepted Holder Limit**” shall mean, provided that the affected Excepted Holder agrees to comply with the requirements established by the Board pursuant to Section 9(n) and subject to adjustment pursuant to Section 9(n), the percentage limit established by the Board pursuant to Section 9(n).

(v) “**Series A Ownership Limit**” shall mean 9.8% (in value or in number of shares, whichever is more restrictive) of the aggregate of the outstanding shares of Series A Preferred Stock. The number and value of the outstanding shares of Series A Preferred Stock shall be determined by the Board in good faith, which determination shall be conclusive for all purposes hereof.

(vi) “**Series A Trust**” shall mean any trust provided for in Section 9(d).

(vii) “**Series A Trustee**” shall mean the Person unaffiliated with the Company and any Prohibited Series A Owner that is appointed by the Company to serve as trustee of the Series A Trust.

(b) Prior to the Restriction Termination Date but subject to Section 9(q), (i) no Person, other than a Series A Excepted Holder, shall Beneficially Own or Constructively Own shares of Series A Preferred Stock in excess of the Series A Ownership Limit and (ii) no Series A Excepted Holder shall Beneficially Own or Constructively Own shares of Series A Preferred Stock in excess of the Series A Excepted Holder Limit for such Series A Excepted Holder.

(c) If any Transfer of shares of Series A Preferred Stock occurs which, if effective or otherwise, would result in any Person Beneficially Owning or Constructively Owning shares of Series A Preferred Stock in violation of Section 9(b),

(i) then that number of shares of Series A Preferred Stock the Beneficial or Constructive Ownership of which otherwise would cause such Person to violate Section 9(b) (rounded up to the nearest whole share) shall be automatically transferred to a Series A Trust for the benefit of a Series A Beneficiary, as described in Sections 9(d) through (i) below, effective as of the close of business on the Business Day prior to the date of such Transfer, and such Person shall acquire no rights in such shares; or

(ii) if the transfer to the Series A Trust described in clause (i) of this sentence would not be effective for any reason to prevent the violation of Section 9(b), then the Transfer of that number of shares of Series A Preferred Stock that otherwise would cause any Person to violate Section 9(b) shall be void ab initio, and the intended transferee shall acquire no rights in such shares of Series A Preferred Stock.

(d) Upon any purported transfer described in Section 9(c) that would result in a transfer of shares of Series A Preferred Stock to a Series A Trust, such shares of Series A Preferred Stock shall be transferred to the Series A Trustee as trustee of a Series A Trust for the exclusive benefit of one or more Series A Beneficiaries. Such transfer to the Series A Trustee shall be effective as of the close of business on the Business Day prior to the purported transfer that results in the transfer to the Series A Trust pursuant to Section 9(c). The Series A Trustee shall be appointed by the Company and shall be a Person unaffiliated with the Company and any Prohibited Series A Owner. Each Series A Beneficiary shall be designated by the Company as provided in Section 9(i) below.

(e) Shares of Series A Preferred Stock held by the Series A Trustee shall continue to be issued and outstanding shares. The Prohibited Series A Owner shall have no rights in the shares of Series A Preferred Stock held by the Series A Trustee. The Prohibited Series A Owner shall not benefit economically from ownership of any shares of Series A Preferred Stock held in trust by the Series A Trustee, shall have no rights to dividends or other Distributions on such shares and shall not possess any rights to vote or other rights attributable to such shares of Series A Preferred Stock held in the Series A Trust.

(f) The Trustee shall have all voting rights and rights to dividends or other Distributions with respect to shares of Series A Preferred Stock held in the Series A Trust, which rights shall be exercised for the exclusive benefit of the Series A Beneficiary. Any dividend or other Distribution paid prior to the discovery by the Company that shares of Series A Preferred Stock have been transferred to the Series A Trustee shall be paid by the recipient of such dividend or other Distribution to the Series A Trustee upon demand and any dividend or other Distribution authorized but unpaid shall be paid when due to the Series A Trustee. Any dividend or other Distribution so paid over to the Series A Trustee shall be held in trust for the Series A Beneficiary. The Prohibited Series A Owner shall have no voting rights with respect to shares of Series A Preferred Stock held in the Series A Trust and, subject to Maryland law, effective as of the date that Shares have been transferred to the Series A Trustee, the Series A Trustee shall have the authority (at the Series A Trustee's sole discretion) (i) to rescind as void any vote cast by a Prohibited Series A Owner prior to the discovery by the Company that shares of Series A Preferred Stock have been transferred to the Series A Trustee and (ii) to recast such vote in accordance with the desires of the Series A Trustee acting for the benefit of the Series A Beneficiary; provided, however, that if the Company has already taken irreversible corporate action, then the Series A Trustee shall not have the authority to rescind and recast such vote. Notwithstanding the provisions of this Section 9, until the Company has received notification that shares of Series A Preferred Stock have been transferred into a Series A Trust, the Company shall be entitled to rely on its stock transfer and other stockholder records for purposes of preparing lists of holders of Series A Preferred Stock entitled to vote at meetings, determining the validity and authority of proxies and otherwise conducting votes of holders of Series A Preferred Stock.

(g) Within 20 days of receiving notice from the Company that shares of Series A Preferred Stock have been transferred to the Series A Trust, the Series A Trustee shall sell the shares held in the Series A Trust to a Person, designated by the Series A Trustee, whose ownership of the shares of Series A Preferred Stock will not violate the ownership limitations set forth in Section 9(b). Upon such sale, the interest of the Series A Beneficiary in the shares sold shall terminate and the Series A Trustee shall distribute the net proceeds of the sale to the Prohibited Series A Owner and to the Series A Beneficiary as provided in this Section 9(g). The Prohibited Series A Owner shall receive the lesser of (i) the price paid by the Prohibited Series A Owner for the shares or, if the Prohibited Series A Owner did not give value for the shares in connection with the event causing the shares to be held in the Series A Trust (*e.g.*, in the case of a gift, devise or other such transaction), the Market Price of the shares on the day of the event causing the shares to be held in the Series A Trust and (ii) the price per share of Series A Preferred Stock received by the Series A Trustee from the sale or other disposition of the shares held in the Series A Trust. The Series A Trustee may reduce the amount payable to the Prohibited Series A Owner by the amount of dividends and other Distributions which have been paid to the Prohibited Series A Owner and are owed by the Prohibited Series A Owner to the Series A Trustee pursuant to Section 9(f). Any net sales proceeds in excess of the amount payable to the Prohibited Series A Owner shall be immediately paid to the Series A Beneficiary. If, prior to the discovery by the Company that shares of Series A Preferred Stock have been transferred to the Series A Trustee, such shares are sold by a Prohibited Series A Owner, then (x) such shares shall be deemed to have been sold on behalf of the Series A Trust and (y) to the extent that the Prohibited Series A Owner received an amount for such shares that exceeds the amount that such Prohibited Series A Owner was entitled to receive pursuant to this Section 9(g), such excess shall be paid to the Series A Trustee upon demand.

(h) Shares of Series A Preferred Stock transferred to the Series A Trustee shall be deemed to have been offered for sale to the Company, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that resulted in such transfer to the Series A Trust (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Company, or its designee, accepts such offer. The Company may reduce the amount payable to the Prohibited Series A Owner by the amount of dividends and other Distributions which have been paid to the Prohibited Series A Owner and are owed by the Prohibited Series A Owner to the Series A Trustee pursuant to Section 9(f). The Company may pay the amount of such reduction to the Series A Trustee for the benefit of the Series A Beneficiary. The Company shall have the right to accept such offer until the Series A Trustee has sold the shares held in the Series A Trust pursuant to Section 9(g). Upon such a sale to the Company, the interest of the Series A Beneficiary in the shares sold shall terminate and the Series A Trustee shall distribute the net proceeds of the sale to the Prohibited Series A Owner.

(i) By written notice to the Series A Trustee, the Company may designate one or more nonprofit organizations to be the Series A Beneficiary of the interest in the Series A Trust such that (i) shares of Series A Preferred Stock held in the Series A Trust would not violate the restrictions set forth in Section 9(b) in the hands of such Series A Beneficiary and (ii) each such organization must be described in Section 501(c)(3) of the Code and contributions to each such organization must be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

(j) If the Board or any duly authorized committee thereof shall at any time determine in good faith that a Transfer or other event has taken place that results in a violation of Section 9(b) or that a Person intends to acquire or has attempted to acquire Beneficial or Constructive Ownership of any shares of Series A Preferred Stock in violation of Section 9(b) (whether or not such violation is intended), the Board or a committee thereof shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Company to redeem shares of Series A Preferred Stock, refusing to give effect to such Transfer on the books of the Company or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer or attempted Transfer in violation of Section 9(b) shall automatically result in the transfer to the Series A Trust described above, or, if applicable, shall be void ab initio as provided above irrespective of any action (or non-action) by the Board or a committee thereof.

(k) Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of shares of Series A Preferred Stock that will or may violate Section 9(b), or any Person who would have owned shares of Series A Preferred Stock that resulted in a transfer to the Series A Trust pursuant to Section 9(c), shall immediately give written notice to the Company of such event, or in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Company such other information as the Company may request in order to determine the effect, if any, of such Transfer on the Company's qualification as a REIT.

(l) Subject to Section 9(q), nothing contained in this Section 9 shall limit the authority of the Board to take such other action as it deems necessary or advisable to protect the Company and the interests of the stockholders in preserving the Company's status as a REIT.

(m) The Board shall have the power to determine the application of any provisions of this Section 9 and any definition in Section 9(a), including in the case of an ambiguity in the application of any provisions of this Section 9 or any such definition, with respect to any situation based on the facts known to it. In the event this Section 9 requires an action by the Board and the Charter fails to provide specific guidance with respect to such action, the Board shall have the power to determine the action to be taken so long as such action is not contrary to the provisions of Article V of the Charter or this Section 9. Absent a decision to the contrary by the Board (which the Board may make in its sole and absolute discretion), if a Person would have (but for the remedies set forth in Section 9(j) acquired Beneficial Ownership or Constructive Ownership of shares of Series A Preferred Stock in violation of Section 9(b), such remedies (as applicable) shall apply first to the shares of Series A Preferred Stock which, but for such remedies, would have been Beneficially Owned or Constructively Owned (but not actually owned) by such Person, pro rata among the Persons who actually own such shares of Series A Preferred Stock based upon the relative number of the shares of Series A Preferred Stock held by each such Person.

(n) Subject to Section 9(b), the Board, in its sole discretion, may (prospectively or retroactively) exempt a Person from the Series A Ownership Limit and establish or increase a Series A Excepted Holder Limit for such Person if:

(i) the Board obtains such representations, covenants and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial Ownership or Constructive Ownership of such shares of Series A Preferred Stock will violate Section 9(b);

(ii) such Person does not, and represents that it will not, actually own or Constructively Own an interest in a tenant of the Company (or a tenant of any entity owned or controlled by the Company) that would cause the Company to actually own or Constructively Own more than a 9.9% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant and the Board obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact (for this purpose, a tenant from whom the Company (or an entity owned or controlled by the Company) derives (and is expected to continue to derive) a sufficiently small amount of revenue such that, in the opinion of the Board, rent from such tenant would not adversely affect the Company's ability to qualify as a REIT, shall not be treated as a tenant of the Company); and

(iii) such Person agrees that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in this Section 9) will result in such shares of Series A Preferred Stock being automatically transferred to a Series A Trust in accordance with Sections 9(d) through (i) above.

Prior to granting any exception pursuant to this Section 9(n), the Board may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board in its sole discretion, as it may deem necessary or advisable in order to determine or ensure the Company's status as a REIT. Notwithstanding the receipt of any ruling or opinion, the Board may impose such conditions or restrictions as it deems appropriate in connection with granting such exception.

(o) Subject to Section 5.7(ii)(a)(I)(B) of the Charter, an underwriter, placement agent or initial purchaser that participates in a public offering, a private placement or private resale of shares of Series A Preferred Stock may Beneficially Own or Constructively Own shares of Series A Preferred Stock in excess of the Series A Ownership Limit, but only to the extent necessary to facilitate such public offering, private placement or resale of such shares and provided that the restrictions contained in Section 5.7(ii)(a)(I) will not be violated following the distribution by such underwriter, placement agent or initial purchaser of such Shares.

(p) Each certificate representing shares of Series A Preferred Stock, if certificated, shall bear a legend that substantially describes the foregoing restrictions on transfer and ownership or, instead of such legend, the certificate, if any, may state that the Company will furnish a full statement about certain restrictions on transferability to a stockholder on request and without charge.

(q) Nothing in this Section 9 shall preclude the settlement of any transaction entered into through the facilities of the NYSE or any other national securities exchange or automated inter-dealer quotation system. The fact that the settlement of any transaction occurs shall not negate the effect of any provision of Section 9, and any transfer in such a transaction shall be subject to all of the provisions and limitations set forth in this Section 9.

10. Conversion. The Series A Preferred Stock is not convertible into or exchangeable for any other property or securities of the Company, except as provided in Section 7 above.

11. Term. The Series A Preferred Stock has no stated maturity date and shall not be subject to any sinking fund and is not subject to mandatory redemption. The Company shall not be required to set aside funds to redeem the Series A Preferred Stock.

12. Status of Redeemed or Repurchased Series A Preferred Stock. All shares of Series A Preferred Stock redeemed, repurchased or otherwise acquired in any manner by the Company shall be retired and shall be restored to the status of authorized but unissued Preferred Stock, without designation as to series or class.

SECOND: The shares of Series A Preferred Stock have been classified and designated by the Board under the authority contained in the Charter.

THIRD: These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

FOURTH: The undersigned acknowledges these Articles Supplementary to be the corporate act of the Company and, as to all matters or facts required to be verified under oath, the undersigned acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Innovative Industrial Properties, Inc. has caused these Articles Supplementary to be signed in its name and on its behalf by its Chief Executive Officer, and attested to by its Secretary on this 16th day of October, 2017.

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

By: /s/ Paul Smithers

Paul Smithers, Chief Executive Officer and President

Attest:

By: /s/ Brian Wolfe

Brian Wolfe, Secretary

**INNOVATIVE INDUSTRIAL PROPERTIES, INC.
ARTICLES OF AMENDMENT**

JUNE 3, 2020

Innovative Industrial Properties, Inc., a Maryland corporation (the “**Corporation**”), hereby certifies to the State Department of Assessments and Taxation of Maryland (the “**Department**”) that:

FIRST: Article V, Section 5.6 of the Articles of Amendment and Restatement of the Corporation, filed with the Department on January 24, 2017 (as amended and supplemented to date and as may be amended and supplemented from time to time, the “**Charter**”), is hereby amended by deleting Section 5.6 in its entirety and inserting in its place, the following:

CHARTER AND BYLAWS. The rights of all Stockholders and the terms of all Shares are subject to the provisions of the Charter and the Bylaws. The Board shall have the non-exclusive power to adopt, alter or repeal any provision of the Bylaws and to make new Bylaws.

SECOND: The foregoing amendment does not increase the authorized stock of the Corporation nor does this amendment change the information required by subsection (b)(2)(i) of Section 2-607 of the Maryland General Corporation Law.

THIRD: The foregoing amendment of the Charter has been declared advisable and approved by the Board of Directors of the Corporation in the manner and by the vote required by law and approved by the requisite vote of the stockholders of the Corporation in the manner and by the vote required by law.

FOURTH: The undersigned Chief Executive Officer of the Corporation acknowledges these Articles of Amendment to be the corporate act of the Corporation and, as to all matters of facts required to be verified under oath, the undersigned Chief Executive Officer acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties of perjury.

IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment to be executed in its name and on its behalf by its Chief Executive Officer and President and attested to by its Vice President, General Counsel and Secretary as of the date first written above.

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

By: /s/ Paul Smithers
Name: Paul Smithers
Title: President, Chief Executive Officer and Director

ATTEST:

By: /s/ Brian Wolfe
Name: Brian Wolfe
Title: Vice President, General Counsel and Secretary

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

ARTICLES SUPPLEMENTARY

9.00% SERIES A CUMULATIVE REDEEMABLE PREFERRED STOCK

Innovative Industrial Properties, Inc., a Maryland corporation (the “**Company**”), hereby certifies to the State Department of Assessments and Taxation of Maryland (the “**SDAT**”) that:

FIRST: By Articles Supplementary filed with the SDAT on October 16, 2017 (the “**Prior Articles Supplementary**”), the Company classified and designated 690,000 shares (the “**Prior Shares**”) of its authorized but unissued preferred stock, par value \$0.001 per share (“**Preferred Stock**”), as a separate series of Preferred Stock designated as the “9.00% Series A Cumulative Redeemable Preferred Stock” of the Company (the “**Series A Preferred Stock**”), and set the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of such Series A Preferred Stock, all as set forth in the Prior Articles Supplementary.

SECOND: The Board of Directors of the Company (the “**Board**”), or a duly authorized committee thereof, adopted resolutions on or as of August 14, 2017 that authorized the issuance of up to all of the Prior Shares of Series A Preferred Stock.

THIRD: Pursuant to authority expressly vested in the Board by Article V of the Second Articles of Amendment and Restatement of the Company (which, as amended and supplemented from time to time, together with these Articles Supplementary, are referred to herein as the “**Charter**”) and Section 2-208 of the Maryland General Corporation Law, the Board adopted resolutions on or as of May 15, 2024 that duly classified and designated 22,660,000 shares (the “**Additional Shares**”) of authorized but unissued Preferred Stock as additional shares of Series A Preferred Stock, with the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption as set forth in the Prior Articles Supplementary. After giving effect to the foregoing classification and designation, the total number of shares of Series A Preferred Stock that the Company has the authority to issue under the Charter is 23,350,000 shares.

FOURTH: The undersigned acknowledges these Articles Supplementary to be the corporate act of the Company and, as to all matters or facts required to be verified under oath, the undersigned acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

FIFTH: These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

SIXTH: These Articles Supplementary shall be effective at the time the SDAT accepts these Articles Supplementary for record.

SEVENTH: The undersigned Chief Executive Officer and President of the Company acknowledges these Articles Supplementary to be the act of the Company and, as to all matters or facts required to be verified under oath, the undersigned Chief Executive Officer and President acknowledges that to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Innovative Industrial Properties, Inc. has caused these Articles Supplementary to be signed in its name and on its behalf by its Chief Executive Officer and President, and attested to by its Secretary on this 21st day of May, 2024.

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

By: /s/ Paul Smithers
Paul Smithers, Chief Executive Officer and President

Attest:

By: /s/ Brian Wolfe
Brian Wolfe, Secretary

Innovative Industrial Properties, Inc.
Certification of Chief Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Paul Smithers, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of Innovative Industrial Properties, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2024

/s/ Paul Smithers

Paul Smithers

Chief Executive Officer, President and Director

Innovative Industrial Properties, Inc.
Certification of Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, David Smith, certify that:

- 1) I have reviewed this Quarterly Report on Form 10-Q of Innovative Industrial Properties, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2024

/s/ David Smith

David Smith

Chief Financial Officer and Treasurer

**Innovative Industrial Properties, Inc.
Certification Pursuant to
18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report on Form 10-Q of Innovative Industrial Properties, Inc. (the "Company") for the period ended September 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Paul Smithers, Chief Executive Officer, President and Director of the Company, and I, David Smith, Chief Financial Officer and Treasurer of the Company, each certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- 1) The Report fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and
- 2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 7, 2024

/s/ Paul Smithers

Paul Smithers

Chief Executive Officer, President and Director

/s/ David Smith

David Smith

Chief Financial Officer and Treasurer
