

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

FORM 10-K

(Mark One)

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

For the Fiscal Year Ended December 31, 2022

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)

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

<u>Title of Each Class</u>
Common Stock, par value \$0.001 per share
Series A Preferred Stock, par value \$0.001 per share

<u>Name of Each Exchange on Which Registered</u>
New York Stock Exchange
New York Stock Exchange

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

None.

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES ☒ NO ☐

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Exchange Act. YES ☐ NO ☒

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act 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 (Section 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 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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

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

The aggregate market value of the common stock held by non-affiliates of the Registrant was approximately \$3.0 billion, based upon the last reported sale price of \$109.87 per share on the New York Stock Exchange on June 30, 2022, the last business day of the Registrant's most recently completed second quarter.

As of February 28, 2023, there were 28,002,799 shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of Innovative Industrial Properties, Inc.'s Proxy Statement with respect to its 2023 Annual Meeting of Stockholders to be filed not later than 120 days after the end of the registrant's fiscal year are incorporated by reference into Part III hereof.

INNOVATIVE INDUSTRIAL PROPERTIES, INC.

FORM 10-K – ANNUAL REPORT

DECEMBER 31, 2022

TABLE OF CONTENTS

PART I

Item 1.	Business	5
Item 1A.	Risk Factors	21
Item 1B.	Unresolved Staff Comments	56
Item 2.	Properties	57
Item 3.	Legal Proceedings	58
Item 4.	Mine Safety Disclosures	58

PART II

Item 5.	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	59
Item 6.	[Reserved]	60
Item 7.	Management’s Discussion and Analysis of Financial Condition and Results of Operations	61
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	77
Item 8.	Financial Statements and Supplementary Data	77
Item 9.	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	77
Item 9A.	Controls and Procedures	77
Item 9B.	Other Information	81
Item 9C.	Disclosure Regarding Foreign Jurisdictions that Prevent Inspections	81

PART III

Item 10.	Directors, Executive Officers and Corporate Governance	82
Item 11.	Executive Compensation	82
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	82
Item 13.	Certain Relationships and Related Transactions, and Director Independence	82
Item 14.	Principal Accounting Fees and Services	82

PART IV

Item 15.	Exhibit and Financial Statement Schedule	83
Item 16.	Form 10-K Summary	84

SIGNATURES

Signatures	85
----------------------------	----

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

We make statements in this report that are “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 (set forth in Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). In particular, 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, as well as 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;
- our ability to improve our internal control over financial reporting, including our inability to remediate an identified material weakness, and the costs and the time associated with such efforts;
- the impact of pandemics on us, our business, our tenants, or the economy generally;
- war and other hostilities, including the conflict in Ukraine;
- 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;

[Table of Contents](#)

- 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;
- our ability to maintain our qualification as a real estate investment trust (“REIT”) for U.S. federal income tax purposes;
- our ability to maintain our exemption from registration under the Investment Company Act of 1940 (the “Investment Company Act”);
- availability of qualified personnel; and
- market trends in our industry, interest rates, real estate values, the securities markets or the general economy.

While forward-looking statements reflect our good faith beliefs, they are not guarantees of future performance. We disclaim any obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. For a further discussion of these and other factors that could impact our future results, performance or transactions, see Item 1A, “Risk Factors.”

Market data and industry forecasts and projections used in this Annual Report on Form 10-K have been obtained from independent industry sources. Forecasts, projections and other forward-looking information obtained from such sources are subject to similar qualifications and uncertainties as other forward-looking statements in this report.

PART I

ITEM 1. *BUSINESS*

General

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 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. As of December 31, 2022, we had 19 full-time employees.

Our corporate office is located at 1389 Center Drive, Suite 200, Park City, Utah 84098. Our telephone number is (858) 997-3332.

2022 Business Update

Investments

During 2022, we acquired nine new properties and made additional investments into existing properties under development or redevelopment. As of December 31, 2022, we owned 110 properties comprising an aggregate of approximately 8.7 million rentable square feet (including approximately 1.6 million rentable square feet under development/redevelopment) in Arizona, California, Colorado, Florida, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Texas, Virginia and Washington. Of these properties, we include 108 properties in our operating portfolio, which were 100% leased to state-licensed cannabis operators as of December 31, 2022, with a weighted-average remaining lease term of approximately 15.3 years. We do not include in our operating portfolio two of our properties, which were previously leased to Kings Garden Inc. (“Kings Garden”), and an expansion project at a property where Kings Garden continues to occupy the property pursuant to a confidential, contingent settlement agreement, all of which were under development as of December 31, 2022, and together are expected to comprise approximately 395,000 rentable square feet upon completion of development.

As of December 31, 2022, we had invested an aggregate of approximately \$2.2 billion across our property portfolio (consisting of purchase price and construction funding and improvements reimbursed to tenants, but excluding transaction costs) and had committed an additional approximately \$125.5 million to reimburse certain tenants and sellers for completion of construction and improvements at our properties. These statistics do not include an \$18.5 million loan commitment from us to a developer for construction of a regulated cannabis cultivation and processing facility in California, of which we have funded approximately \$18.0 million as of December 31, 2022. For more information regarding our properties and tenants, see the sections entitled “— Tenant Concentration” and “— Geographic Concentration” below.

Property Sale

In November 2022, we sold one of our Pennsylvania properties that was leased to a subsidiary of Maitri Holdings, LLC (“Maitri”) for \$23.5 million (approximately \$461 per square foot), excluding transaction costs, and recognized a gain on sale of the property of approximately \$3.6 million.

Financial Results

	Years Ended December 31,		Percentage
	2022	2021	Increase
<i>(dollars in thousands, except per share data)</i>			
Rental revenues (including tenant reimbursements)	\$ 274,377	\$ 204,551	34 %
Net income attributable to common stockholders	\$ 153,034	\$ 112,638	36 %
Net income attributable to common stockholders per share – diluted	\$ 5.52	\$ 4.55	21 %
AFFO ⁽¹⁾	\$ 233,748	\$ 174,984	34 %
AFFO per share – diluted ⁽¹⁾	\$ 8.45	\$ 6.66	27 %
Dividends per share of common stock declared	\$ 7.10	\$ 5.72	24 %

(1) For a definition and discussion of adjusted funds from operations (“AFFO”) and a reconciliation of AFFO to net income attributable to common stockholders, see Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations.”

Capital Activities

In April 2022, we issued 1,815,790 shares of common stock in an underwritten public offering, which includes the exercise in full of the underwriters’ option to purchase an additional 236,842 shares, resulting in net proceeds of approximately \$330.9 million.

During the year ended December 31, 2022, we sold 117,023 shares of our common stock pursuant to an “at-the-market” offering program (the “Prior ATM Program”) for net proceeds of approximately \$21.1 million.

During the year ended December 31, 2022, we issued 413,166 shares of our common stock upon exchange by holders of approximately \$26.9 million of outstanding principal amount of our 3.75% Exchangeable Senior Notes due 2024 (the “Exchangeable Senior Notes”).

In January 2023, we terminated 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, or ATM Program, up to \$500.0 million in shares of our common stock. As of February 28, 2023, we had not sold any shares of common stock under the ATM Program.

Our Properties

Generally

We have acquired and intend to continue to acquire specialized industrial real estate assets operated by state-licensed cannabis operators through sale-leaseback transactions and third-party purchases. In sale-leaseback transactions, concurrently upon closing of the acquisition, we lease the properties back to the sellers under long-term, triple-net lease agreements. Based on our properties and ongoing review of potential acquisitions, indoor cultivation facilities generally have similar shells as standard light industrial buildings or greenhouses. However, based on our diligence, the regulated cannabis cultivation process typically requires a finely tuned environment to achieve consistent high quality and specificity in cannabinoid levels and to maximize yields, which translates into certain capital improvements in the building’s infrastructure. These improvements can include enhanced HVAC systems for climate and humidity control, high capacity electrical and plumbing systems, specialized lighting systems, and sophisticated building management, cultivation monitoring and security systems. Through our sale-leaseback strategy, we serve as a source of capital to these licensed regulated cannabis operators, allowing them to redeploy their sale proceeds into their core operations to grow

[Table of Contents](#)

their business and achieve higher returns. We may also purchase properties from third parties and fund the necessary improvements through a long-term lease with an identified tenant, which provides those tenants with increased cash flow to deploy in their operating businesses.

The following table sets forth certain information regarding our property portfolio by property type for the year ended and as of December 31, 2022 (dollars in thousands):

Property Type	Number of Properties	Rentable Square Feet		Rental Revenue for the Year Ended December 31, 2022 ⁽¹⁾	Percentage of Rental Revenue
		Operating	Under Development or Redevelopment		
Industrial ⁽²⁾⁽³⁾	68	6,526,000	1,518,000	\$ 239,338	90 %
Retail	33	150,000	—	6,996	3
Industrial/Retail ⁽³⁾	9	458,000	63,000	17,939	7
Total	110	7,134,000	1,581,000	\$ 264,273	100 %

(1) Rental revenue excludes tenant reimbursements.

(2) Rental revenue from industrial properties for the year ended December 31, 2022 includes approximately \$2.8 million of rental revenue related to a Pennsylvania property previously leased to Maitri that we sold in November 2022. Number of properties and rentable square feet include one property acquired in January 2022 which did not satisfy the requirements for sale-leaseback accounting and therefore, the transaction is recognized as a note receivable and is included in other assets, net on our consolidated balance sheet.

(3) "Industrial" reflects facilities utilized or expected to be utilized for regulated cannabis cultivation, processing and/or distribution activities, which can consist of industrial and/or greenhouse space.

As of December 31, 2022, the tenant at each of our leased properties is generally responsible for paying all structural repairs, maintenance expenses, insurance and real estate taxes related to the property during the term of the applicable lease. For additional information on our properties as of December 31, 2022, see Item 2, "Properties."

Our Competitive Strengths

We believe that we have the following competitive strengths:

- Experienced Management Team.** Alan Gold, our executive chairman, and other members of our senior management team have substantial experience in all aspects of the real estate industry, including acquisitions, dispositions, construction, development, management, finance and capital markets. In particular, in August 2004, Mr. Gold and Gary Kreitzer, vice chairman of our board of directors, founded BioMed Realty Trust, Inc. (formerly NYSE: BMR) ("BioMed Realty"), an internally-managed REIT focused on acquiring, developing, owning, leasing and managing laboratory and office space for the life science industry, an industry they believed to be underserved by commercial property investors and lenders and poised for significant growth. Mr. Gold served as chairman of the board of directors and chief executive officer and Mr. Kreitzer served as executive vice president and a member of the board of directors from the founding of BioMed Realty in 2004 through the acquisition of BioMed Realty by an affiliate of The Blackstone Group, L.P. in 2016.
- Recurring Revenue with Contractual Escalations.** As of December 31, 2022, we had acquired 110 properties. Of these properties, 108 properties were 100% leased to state-licensed cannabis operators on triple-net leasing arrangements with a weighted-average remaining lease term of approximately 15.3 years, and which are subject to contractual rental rate increases. Along with our existing portfolio, we expect to continue to enter into additional similar transactions structured to provide recurring revenue with contractual escalations.
- Demonstrated Investment Acumen.** We utilize rigorous underwriting standards for evaluating acquisitions and potential tenants to ensure that they meet our strategic and financial criteria. Our extensive experience and relationships in the real estate and regulated cannabis industry enable us to identify, negotiate and close on acquisitions and leases with established operators and other operators which meet our criteria.

- **Regulated Cannabis Industry Growth Trends.** Based on the strong historical and projected growth for the regulated cannabis industry, we expect to see significant spending by state-licensed cannabis operators on their existing and new state-licensed cannabis facilities, presenting an opportunity for us to be a key capital provider in their expansion initiatives.

Our Business Objectives and Growth Strategies

Our principal business objective is to maximize stockholder returns through a combination of (1) distributions to our stockholders, and (2) sustainable long-term growth in cash flows from increased rents, which we hope to pass on to stockholders in the form of increased distributions. Our primary strategy to achieve our business objective is to acquire and own a portfolio of specialized industrial properties, including regulated cannabis facilities leased to tenants holding the requisite state licenses to operate in the regulated cannabis industry. This strategy includes the following components:

- **Owning Specialized Industrial Properties and Related Real Estate Assets for Income.** We primarily acquire regulated cannabis facilities from licensed operators who will continue their cultivation, processing and/or dispensing operations after our acquisition of the property. We expect to hold acquired properties for investment, with the goal of generating stable and increasing rental income from leasing these properties to licensed operators.
- **Expanding as Additional States Enact Regulated Cannabis Programs.** We acquire properties in the United States, with a focus on states that have established regulated cannabis programs. As of December 31, 2022, we owned properties in 19 states, and we expect that our acquisition opportunities will continue to expand as additional states establish regulated cannabis programs and license new operators.
- **Providing Expansion Capital to Existing Tenants as an Additional Source of Income.** We have provided expansion capital for many of our existing tenant operators as they expand operations in additional states and locations within a state, as well as capital for continued enhancements of production capacity at existing facilities that these operators lease from us, which correspond to adjustments in rent under the applicable leases and other provisions in certain cases. We expect to continue to focus on executing on these expansion initiatives with our tenant operators.
- **Preserving Financial Flexibility on our Balance Sheet.** We are focused on maintaining a flexible capital structure for financing our growth initiatives. As of December 31, 2022, we had debt comprised of approximately \$6.4 million principal amount of Exchangeable Senior Notes and \$300.0 million principal amount of our 5.50% Senior Notes due 2026 (the “Notes due 2026”), representing a total quarterly fixed cash interest obligation of approximately \$4.2 million and approximately 12% of our total gross assets of approximately \$2.6 billion, with no debt maturing until May 2026, other than the Exchangeable Senior Notes in 2024.

Our Target Markets

Our target markets include states that have established regulated cannabis programs. As of December 31, 2022, we owned 110 properties located in Arizona, California, Colorado, Florida, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Texas, Virginia and Washington. According to the Marijuana Business Daily, as of January 31, 2023, 39 states and the District of Columbia have legalized cannabis for medical use, and 21 states and the District of Columbia have legalized cannabis for adult-use.

Although these states have approved the regulated use of cannabis, the applicable state and local laws and regulations vary widely. For example, most states’ laws allow commercial production and sales through dispensaries and set forth rigorous licensing requirements; in other states the licensing rules are unclear. In some states, dispensaries are mandated to operate on a not-for-profit basis. Some states permit home cultivation activities. The states also differ on the

[Table of Contents](#)

form in which they permit cannabis to be sold. For example, some states do not permit cannabis-infused products such as concentrates, edibles and topicals, while other states ban smoking cannabis.

In addition, we expect other factors will be important in the development and growth of the regulated cannabis industry in the United States, including the timeframes for developing regulations and issuing licenses in states that recently passed laws allowing for regulated cannabis; continued legislative authorization of cannabis at the state level; support from local municipalities within a state; federal, state and local taxation of regulated cannabis products; and the level of enforcement against illicit, non-licensed cannabis activities in a state. Progress in the regulated cannabis industry is not assured and any number of factors could slow or halt progress in this area.

Market Opportunity

The Regulated Cannabis Industry

Overview

In the United States, the development and growth of the regulated cannabis industry has generally been driven by state law and regulation, and accordingly, the market varies on a state-by-state basis. State laws that legalize and regulate medical-use cannabis allow patients to consume cannabis for medicinal reasons with a designated healthcare provider's recommendation, subject to various requirements and limitations. States have authorized numerous medical conditions as qualifying conditions for treatment with medical-use cannabis, which vary significantly from state to state and may include, among others, treatment for cancer, glaucoma, HIV/AIDs, wasting syndrome, pain, nausea, seizures, muscle spasms, multiple sclerosis, post-traumatic stress disorder (PTSD), migraines, arthritis, Parkinson's disease, Alzheimer's, lupus, residual limb pain, spinal cord injuries, inflammatory bowel disease and terminal illness.

Industry Trends

According to BDSA, state-legal cannabis sales in the United States are projected to grow from \$26.1 billion in 2022 to \$44.5 billion by 2027, representing a compound annual growth rate of approximately 11%.

As the industry continues to evolve, new ways to consume regulated cannabis products are being developed in order for patients to have the treatment needed for their condition and provide consumers safe, consistent and appealing options. In addition to smoking and vaporizing of dried leaves, cannabis can be incorporated into a variety of edibles, pills, spray products, transdermal patches and topicals, including salves, ointments, lotions and sprays with low or high levels of delta-9-tetrahydrocannabinol ("THC"), the principal psychoactive constituent of the cannabis plant.

As with any nascent but growing industry, operational and business practices evolve and become more sophisticated over time. We believe that the quality and experience of industry participants and the development of sound business, operational and compliance practices have strengthened significantly over time, increasing the attractiveness for investment in the regulated cannabis industry.

Shifting Public Attitudes and State Law and Legislative Activity

We believe that the growth of the regulated cannabis industry has been fueled, in part, by the rapidly changing public attitudes in the United States. In a poll by Pew Research Center released in November 2022, 88% of U.S. adults supported either 1) legalization of cannabis for both medical- and adult-use (59%) or 2) legalization of cannabis for medical-use only (30%).

As of January 31, 2023, 39 states, plus the District of Columbia, have passed laws allowing their citizens to use medical cannabis. The first state to permit the use of cannabis for medicinal purposes was California in 1996, upon adoption of the Compassionate Care Act. The law allowed doctors to recommend cannabis for serious medical conditions and patients were permitted to use, possess and grow cannabis themselves. Several other states adopted medical-use cannabis laws in 1998 and 1999, and the remaining medical-use cannabis states adopted their laws on

[Table of Contents](#)

various dates through 2022. In addition, as of January 31, 2023, 21 states, plus the District of Columbia, have legalized cannabis for adult-use.

Following the approval of state-regulated cannabis, state programs must be developed and businesses must be licensed before commencing cannabis sales. Some states have developed the necessary procedures and licensing requirements quickly, while other states have taken years to develop their programs for production and sales of cannabis. Even where regulatory frameworks for regulated cannabis production and sales are in place, states tend to revise these rules over time. These revisions often impact sales, making it difficult to predict the potential of new markets. States may restrict the number of regulated cannabis businesses permitted; impose significant taxes on regulated cannabis products, in addition to taxes imposed by local municipalities; take limited enforcement actions against non-licensed cannabis operators; restrict the method by which cannabis can be consumed; restrict the ability of alternative health care providers to recommend medical cannabis for treatment; limit the medical conditions that are eligible for cannabis treatment; or require registration of doctors and/or patients, each of which can limit growth of the regulated cannabis industry in those states. Alternatively, states may relax their initial regulations relating to regulated cannabis production and sales and take other actions to support the growth of the regulated cannabis program, which would likely accelerate growth of the regulated cannabis industry in such states.

Access to Capital

To date, the status of state-licensed cannabis under federal law has limited the ability of state-licensed industry participants to fully access the U.S. banking system and traditional financing sources. These limitations, when combined with the high costs of maintaining licensed and stringently regulated cannabis facilities, substantially increase the cost of production. While future changes in federal and state laws may ultimately open up financing options that have not been widely available to date in this industry, we believe that our sale-leaseback and other real estate solutions to state-licensed industry participants will continue to be attractive capital options for regulated operators.

Market Opportunity and Associated Risks

We focus on purchasing specialized industrial real estate assets for the regulated cannabis industry. We believe that our sale-leaseback and other real estate solutions offer an attractive alternative to state-licensed cannabis operators who may have limited access to traditional financing alternatives. We have acquired and intend to continue to acquire regulated cannabis facilities in states that permit regulated cannabis operations.

Notwithstanding the foregoing market opportunity and trends, and despite legalization at the state level, we continue to believe that the current state of federal law creates significant uncertainty and potential risks associated with investing in regulated cannabis facilities, including but not limited to potentially heightened risks related to the use of such facilities for adult-use cannabis operations, if a state passes such laws. For a more complete description of these risks, see the sections “— Governmental Regulation” below and “Risks Related to Regulation” under Item 1A, “Risk Factors.”

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.

Unit Pricing for Regulated Cannabis Products

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 recently 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 is experiencing a sustained increase in inflation rates, 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

Recently, financial markets have been volatile, reflecting heightened geopolitical risks and material tightening of financial conditions since the U.S. Federal Reserve began increasing interest rates in spring of 2022 and continued uncertainty regarding monetary policy.

Driven in part by overall macroeconomic conditions, capital availability has significantly declined for regulated cannabis operators. According to Viridian Capital Advisors ("Viridian"), total equity and debt capital raising for public and private cannabis companies in North America decreased by 68% in 2022 versus 2021. Even more pronounced, total capital raised for the U.S. regulated cannabis cultivation and retail sector was down over 70% in 2022 versus 2021, with equity capital raised in the sector down over 96% and no equity deal in 2022 raising more than \$25 million, according to Viridian. According to Viridian, cannabis stock prices (as measured by the MSOS ETF) had declined more than 85% since their February 2021 peak, and were trading at multi-year lows.

Also according to Viridian, mergers and acquisitions activity in the North American regulated cannabis industry declined significantly in 2022, with aggregate transaction volume in dollar terms down 73% on 29% fewer transactions versus 2021.

Tenant Concentration

As of December 31, 2022, all of our revenues were derived from 110 properties. The following table sets forth certain information regarding the top ten tenants in our property portfolio that represented the largest total invested and committed capital as of and for the year ended December 31, 2022 (dollars in thousands):

Tenant⁽¹⁾	Number of Properties	Total Invested and Committed Capital⁽²⁾	Rental Revenue for the Year Ended December 31, 2022⁽³⁾	Percentage of Rental Revenue
PharmaCann Inc. ("PharmaCann")	11	\$ 306,172	\$ 37,529	14 %
SH Parent, Inc. ("Parallel")	4	203,050	25,447	10
Ascend Wellness Holdings, Inc. ("Ascend")	4	199,050	25,236	9
Green Thumb Industries, Inc. ("Green Thumb")	3	176,800	18,225	7
Curaleaf Holdings, Inc. ("Curaleaf")	8	175,047	16,443	6
Columbia Care, Inc. ("Columbia Care")	21	147,834	16,633	6
Trulieve Cannabis Corp. ("Trulieve")	6	146,503	17,872	7
Holistic Industries Inc. ("Holistic")	5	121,900	15,452	6
Cresco Labs Inc. ("Cresco")	5	120,845	15,607	6
4Front Ventures Corp. ("4Front") ⁽⁴⁾	4	119,150	9,824	4
Total	71	\$ 1,716,351	\$ 198,268	75 %

(1) Includes leases with affiliates of each entity, for which the entity has provided a corporate guaranty.

(2) Total invested and committed capital includes development and improvements allowance not funded as of December 31, 2022.

(3) Rental revenue excludes tenant reimbursements.

(4) Number of properties and total invested and committed capital include one property acquired in January 2022 which did not satisfy the requirements for sale-leaseback accounting and therefore, the transaction is recognized as a note receivable and is included in other assets, net on our consolidated balance sheet.

[Table of Contents](#)

Many of our tenants have limited histories of operations, and have not yet been profitable, or have been profitable only for a short period of time. For some or all of 2023, we expect that many of our tenants will continue to incur losses as their expenses increase in connection with the expansion of their operations and the current operating environment, and that they have made and will continue to make rent payments to us from proceeds from the sale of the applicable property or cash on hand, and not funds from operations. Furthermore, each of our leases does not prohibit the tenant from conducting adult-use cannabis operations at the applicable property, provided such operations are in compliance with applicable state and local laws. As such, our tenant may conduct adult-use cannabis operations at the property it leases from us, which in turn could expose that tenant, us and our property to different and greater risks, including heightened risks of enforcement of federal laws. For example, Arizona, California, Colorado, Illinois, Maryland, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, Virginia and Washington permit licensed adult-use cannabis operations, and our leases with tenants in those states allow for adult-use cannabis operations to be conducted at the properties in compliance with state and local laws.

In July 2022, Kings Garden defaulted on its obligations to pay rent at all of the properties it leases with us, and pursuant to a confidential, conditional settlement agreement executed on September 11, 2022 between us and Kings Garden, we terminated the leases for two properties that were in development or redevelopment as of December 31, 2022 and regained possession of those properties. We have recovered approximately \$15.4 million of funds paid to Kings Garden. See Note 11 “Commitments and Contingencies — Litigation — Kings Garden Lawsuit” to our consolidated financial statements for more information.

In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak Industries, Inc. (“Green Peak”) defaulted on its obligations to pay rent at one of our properties in Michigan. In February 2023, Parallel also defaulted on its obligations to pay rent at one of our properties in Texas.

In January 2023, we also executed limited rent deferrals for Holistic Industries Inc. (“Holistic”) for two of our properties in California and Michigan, and a limited rent deferral for Calyx Peak, Inc. at our Missouri property.

See each of the discussions under Item 1A, “Risk Factors,” under the captions “Many of our existing tenants are, and we expect that many of our future tenants will be, companies with limited histories of operations and may be unable to pay rent with funds from operations or at all, which could adversely affect our cash available to make distributions to our stockholders or otherwise impair the value of our common stock,” and “Because we lease our properties to a limited number of tenants, and to the extent we depend on a limited number of tenants in the future, the inability of any single tenant to make its lease payments could adversely affect our business and our ability to make distributions to our stockholders.”

Geographic Concentration

The following table sets forth certain state-by-state information regarding our property portfolio for the year ended and as of December 31, 2022 (dollars in thousands):

State	Number of Properties	Rentable Sq. Ft. ⁽¹⁾	Rental Revenue for the Year Ended December 31, 2022 ⁽²⁾	Percentage of Rental Revenue
Arizona	3	377,000	\$ 4,068	1.5 %
California	13	925,000	27,036	9.9
Colorado	27	233,000	8,172	3.0
Florida	4	1,008,000	24,409	8.9
Illinois	7	965,000	36,542	13.3
Maryland	3	271,000	7,982	2.9
Massachusetts ⁽³⁾	10	989,000	37,161	13.5
Michigan	14	946,000	34,027	12.4
Minnesota	1	89,000	1,745	0.6
Missouri	1	83,000	1,047	0.4
Nevada	1	43,000	1,525	0.6
New Jersey	4	291,000	10,176	3.7
New York	2	589,000	16,310	5.9
North Dakota	3	42,000	1,977	0.7
Ohio	4	217,000	9,755	3.6
Pennsylvania	9	1,303,000	42,396	15.5
Texas	2	148,000	4,475	1.6
Virginia	1	82,000	2,822	1.0
Washington	1	114,000	2,752	1.0
Total	110	8,715,000	\$ 274,377	100.0 %

(1) Includes approximately 1.6 million square feet under development/redevelopment.

(2) Includes tenant reimbursements of approximately \$10.1 million for insurance and taxes in the aggregate.

(3) Number of properties and rentable square feet include one property acquired in January 2022 which did not satisfy the requirements for sale-leaseback accounting and therefore, the transaction is recognized as a note receivable and is included in other assets, net on our consolidated balance sheet.

See discussion under Item 1A, “Risk Factors,” under the caption “Our properties are, and are expected to continue to be, geographically concentrated in states that permit licensed cannabis operations, and we will be subject to social, political and economic risks of doing business in these states and any other state in which we may own property.” The regulated cannabis market is in its early stages; is generally subject to strict regulations providing for, among other things, comprehensive product testing and tracking systems, limited medical conditions for treatment with medical-use cannabis, limitations on the form in which medical cannabis can be consumed and enhanced registration requirements for patients and physicians; is subject in many instances to significant taxation burdens at the federal, state and local levels; competes in many instances with non-licensed cannabis operators due in part to limited enforcement by state and local authorities; and may face opposition from local municipalities within a state, any of which may contribute to a particular market not growing and developing in the way that we or our tenants projected.

Our Financing Strategy

We intend to meet our long-term liquidity needs through cash flow from operations and the issuance of equity and debt securities, including common stock, preferred stock and notes. Where possible, we also may issue limited partnership interests in our Operating Partnership to acquire properties from existing owners seeking a tax-deferred transaction. We expect to issue equity and debt securities at times when we believe that we can reinvest the proceeds of such an offering in accretive property acquisitions. We may also issue common stock to permanently finance properties that were previously financed by debt securities. However, we cannot assure you that we will have access to the capital markets at times and on terms that are acceptable to us. Our ability to access the capital markets and to obtain other financing arrangements is also significantly limited by our focus on serving the regulated cannabis industry. Our

[Table of Contents](#)

investment guidelines 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.

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

Capital raising activities by U.S. REITs experienced a steep decline in 2022, with that decline more pronounced in the second half of 2022. According to the National Association of Real Estate Investment Trusts, Inc. ("NAREIT"), U.S. REITs raised \$41.5 billion in debt and equity during 2022, compared to \$133.6 billion in 2021, representing the lowest level since 2009.

Recently, financial markets have been volatile in general, which has also significantly reduced our access to capital. If sustained, this would 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.

Risk Management

As of December 31, 2022, we owned 110 properties located in 19 states. Many of our tenants are tenants at multiple properties. We will continue to attempt to diversify the investment size and location of our portfolio of properties in order to manage our portfolio-level risk. Over the long term, we intend that no single property will exceed 20% of our total assets and that properties leased to a single tenant (individually or together with its affiliates) will not exceed 20% of our total assets. Notwithstanding the foregoing, the industry continues to experience significant consolidation among regulated cannabis operators, and certain of our tenant operators may combine, increasing the concentration of our tenant portfolio with those consolidated operators.

We expect that single tenants will continue to occupy our properties pursuant to triple-net lease arrangements in general and, therefore, the success of our investments will be materially dependent on the financial stability of these tenants. Many of our existing tenants have limited histories of operations, and have not yet been profitable, or have been profitable only for a short period of time. As such, we expect that many of our current and future tenants will continue to incur losses as their expenses increase in connection with the expansion of their operations, and that they have made and will make rent payments to us from proceeds from the sale of the applicable property or cash on hand, and not funds from operations. We also expect the success of our tenants, and their ability to make rent payments to us, to significantly depend on the projected growth and development of the applicable state market; as many of these state markets have a very limited history, and other state markets are still forming their regulations, issuing licenses and otherwise establishing the market framework, significant uncertainty exists as to whether these markets will develop in the way that we or our tenants project.

We evaluate the credit quality of our tenants and any guarantors on an ongoing basis. In addition, we monitor the payment history data for all of our tenants and, in some instances, we monitor our tenants by periodically conducting site visits and meeting with the tenants to discuss their operations. In many instances, we will generally not be entitled to financial results or other credit-related data from our tenants. See the section "Risks Related to Our Business" under Item 1A, "Risk Factors."

Competition

The current market for properties that meet our investment objectives is limited. In addition, we believe finding properties that are appropriate for the specific use of allowing regulated cannabis operators may be limited as more competitors enter the market, and as regulated cannabis operators obtain greater access to alternative financing sources, including but not limited to equity and debt financing sources.

We face significant competition from a diverse mix of market participants, including but not limited to, other companies with similar business models, independent investors, hedge funds and other real estate investors, hard money

lenders, and cannabis operators themselves, all of whom may compete with us in our efforts to acquire real estate zoned for regulated cannabis facilities. In some instances, we will be competing to acquire real estate with persons who have no interest in the cannabis industry, but have identified value in a piece of real estate that we may be interested in acquiring.

These competitors may prevent us from acquiring desirable properties or may cause an increase in the price we must pay for properties. Our competitors may have greater financial and operational resources than we do and may be willing to pay more for certain assets or may be willing to accept more risk than we believe can be prudently managed. In particular, larger companies may enjoy significant competitive advantages that result from, among other things, a lower cost of capital and enhanced operating efficiencies. Our competitors may also adopt transaction structures similar to ours, which would decrease our competitive advantage in offering flexible transaction terms.

In addition, due to a number of factors, including but not limited to potential greater clarity of the laws and regulations governing regulated cannabis by state and federal governments, the number of entities and the amount of funds competing for suitable investment properties may increase substantially, resulting in increased demand and increased prices paid for these properties. Furthermore, changes in federal regulations pertaining to cannabis could also lead to increased access to U.S. capital markets for our competitors and for regulated cannabis operators (including but not limited to access to the Nasdaq Stock Market and/or the New York Stock Exchange). We compete for the acquisition of properties primarily based on purchase price and the lease terms (including rental rates, lease duration and improvement allowances, among others) in our sale leaseback and other real estate capital transactions. If we pay higher prices for properties or offer lease terms that are less attractive for us, our profitability may decrease, and you may experience a lower return on our common stock. Increased competition for properties may also preclude us from acquiring those properties that would generate attractive returns to us.

Governmental Regulation

Federal Laws Applicable to the Regulated Cannabis Industry

Cannabis (with the exception of hemp containing no more than 0.3% THC by dry weight) is illegal under U.S. federal law. The U.S. federal government regulates drugs through the Controlled Substances Act of 1970 (the “CSA”). The CSA classifies marijuana (cannabis) as a Schedule I controlled substance, and as such, the manufacture, distribution and dispensing of marijuana is illegal under U.S. federal law. Moreover, on two separate occasions the U.S. Supreme Court ruled that the CSA trumps state law. That means that the federal government may enforce U.S. drug laws against companies operating in accordance with state cannabis laws, creating a climate of legal uncertainty regarding the production and sale of cannabis. Unless and until Congress amends the CSA with respect to cannabis (and the President approves such amendment), there is a risk that the federal law enforcement authorities responsible for enforcing the CSA, including the U.S. Department of Justice (“DOJ”) and the Drug Enforcement Agency (“DEA”), may enforce current federal law.

Under the Obama administration, the DOJ previously issued memoranda, including the so-called “Cole Memo” on August 29, 2013, providing internal guidance to federal prosecutors concerning enforcement of federal cannabis prohibitions under the CSA. This guidance essentially characterized as inefficient the use of federal law enforcement resources to prosecute those complying with state laws allowing the use, manufacture and distribution of cannabis where states have enacted laws legalizing cannabis in some form and have also implemented strong and effective regulatory and enforcement systems to control the cultivation, processing, distribution, sale and possession of cannabis, conduct in compliance with those laws and regulations was not a priority for the DOJ. Instead, the Cole Memo directed U.S. Attorney’s Offices discretion not to investigate or prosecute state law compliant participants in the medical cannabis industry who did not implicate one or more specifically identified federal government priorities, including preventing interstate diversion or distribution of cannabis to minors.

On January 4, 2018, then-U.S. Attorney General Jeff Sessions issued a written memorandum rescinding the Cole Memo and related internal guidance issued by the DOJ regarding federal law enforcement priorities involving cannabis (the “Sessions Memo”). The Sessions Memo instructed federal prosecutors to enforce the laws enacted by Congress and to follow well-established principles that govern all federal prosecutors when deciding whether to pursue prosecutions related to cannabis activities. As a result, federal prosecutors could, and still can, use their prosecutorial discretion to

[Table of Contents](#)

decide to prosecute actors compliant with their state laws. The Sessions Memo states that “these principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.” The Sessions Memo went on to state that given the DOJ’s well-established general principles, “previous nationwide guidance specific to marijuana is unnecessary and is rescinded, effective immediately.” Although there have not been any identified prosecutions of state law compliant cannabis entities, there can be no assurance that the federal government will not enforce federal laws relating to cannabis in the future and it remains unclear what impact the Sessions Memo will have on the regulated cannabis industry, if any.

Jeff Sessions resigned as U.S. Attorney General on November 7, 2018.

On February 14, 2019, William Barr was confirmed as U.S. Attorney General. However, in a written response to questions from U.S. Senator Cory Booker made as a nominee, Attorney General Barr stated “I do not intend to go after parties who have complied with state law in reliance on the Cole Memo.” The DOJ under Mr. Barr did not take a formal position on federal enforcement of laws relating to cannabis.

Attorney General Merrick Garland, who was confirmed as U.S. Attorney General on March 10, 2021, has not provided a clear policy directive for the United States as it pertains to state-legal cannabis-related activities, and there can be no assurances that DOJ or other law enforcement authorities will not seek to vigorously enforce current U.S. federal laws.

One legislative safeguard for the medical cannabis industry, appended to federal appropriations legislation, remains in place. Commonly referred to as the “Rohrabacher-Blumenauer Amendment”, this so-called “rider” provision has been appended to the Consolidated Appropriations Acts since 2015. Under the terms of the Rohrabacher-Blumenauer rider, the federal government is prohibited from using congressionally appropriated funds to enforce federal cannabis laws against regulated medical cannabis actors operating in compliance with state and local law. In December 2022, the omnibus spending bill passed including the Rohrabacher-Blumenauer Amendment, extending its application until September 30, 2023. There is no assurance that Congress will approve inclusion of a similar prohibition on DOJ spending in the appropriations bills for future years. In *USA vs. McIntosh*, the United States Circuit Court of Appeals for the Ninth Circuit held that this provision prohibits the DOJ from spending funds from relevant appropriations acts to prosecute individuals who engage in conduct permitted by state medical-use cannabis laws and who strictly comply with such laws. However, the Ninth Circuit’s opinion, which only applies in the states of Alaska, Arizona, California, Hawaii and Idaho, also held that persons who do not strictly comply with all state laws and regulations regarding the distribution, possession and cultivation of medical-use cannabis have engaged in conduct that is unauthorized, and in such instances the DOJ may prosecute those individuals.

Furthermore, our leases do not prohibit cannabis cultivation for adult-use that is permissible under the state and local laws where our facilities are located. Consequently, certain of our tenants cultivate, process and/or dispense adult-use cannabis now (and may in the future) in our facilities that are permitted by such state and local laws, which may in turn subject the tenant, us and our properties to greater and/or different federal legal and other risks than exclusively medical-use cannabis facilities, including not providing protection under the above Congressional spending provision.

Federal prosecutors have significant discretion and no assurance can be given that the federal prosecutor in each judicial district where we purchase a property will not choose to strictly enforce the federal laws governing cannabis production, processing or distribution. Any change in the federal government’s enforcement posture with respect to state-licensed cultivation of cannabis, including the enforcement postures of individual federal prosecutors in judicial districts where we purchase properties, would result in our inability to execute our business plan, and we would likely suffer significant losses with respect to our investment in regulated cannabis facilities in the United States, which would adversely affect the trading price of our securities. Furthermore, following any such change in the federal government’s enforcement position, we could be subject to criminal prosecution, which could lead to imprisonment and/or the imposition of penalties, fines, or forfeiture. See Item 1A, “Risk Factors – Risks Relating to Regulation.”

State Laws Applicable to the Regulated Cannabis Industry

In most states that have legalized cannabis in some form, the growing, processing and/or dispensing of cannabis generally requires that the operator obtain one or more licenses in accordance with applicable state requirements. In addition, many states regulate various aspects of the growing, processing and/or dispensing of cannabis. Local governments in some cases also impose rules and regulations on the manner of operating cannabis businesses. As a result, applicable state and local laws and regulations vary widely, including, but not limited to, regulations governing the medical cannabis program (such as the type of cannabis products permitted under the program, qualifications and registration of health professionals that may recommend treatment with medical cannabis, and the types of medical conditions that qualify for medical cannabis), product testing, the level of enforcement by state and local authorities on non-licensed cannabis operators, state and local taxation of regulated cannabis products, local municipality bans on operations and operator licensing processes and renewals. As a result of these and other factors, if our tenants default under their leases, we may not be able to find new tenants that can successfully engage in the cultivation, processing or dispensing of regulated cannabis on the properties.

There is no guarantee that state laws legalizing and regulating the sale and use of cannabis will not be repealed, amended or overturned, or that local governmental authorities will not limit the applicability of state laws within their respective jurisdictions. Unless and until the United States Congress amends or repeals the CSA with respect to medical and/or adult-use cannabis (and as to the timing or scope of any such potential amendment or repeal there can be no assurance), there is a significant risk that federal authorities may enforce current federal law. If the federal government begins to enforce federal laws relating to cannabis in states where the sale and use of cannabis is currently legal, or if existing applicable state laws are repealed or curtailed, our business, results of operations, financial condition and prospects would be materially adversely affected.

Laws Applicable to Financial Services for the Regulated Cannabis Industry

All banks are subject to federal law, whether the bank is a national bank or state-chartered bank. At a minimum, all banks maintain federal deposit insurance which requires adherence to federal law. Violation of federal law could subject a bank to loss of its charter. Financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, unlicensed money transmitter statutes and the Bank Secrecy Act. For example, under the Bank Secrecy Act, banks must report to the federal government any suspected illegal activity, which would include any transaction associated with a cannabis-related business. These reports must be filed even though the business is operating in compliance with applicable state and local laws. Therefore, financial institutions that conduct transactions with money generated by cannabis-related conduct could face criminal liability under the Bank Secrecy Act for, among other things, failing to identify or report financial transactions that involve the proceeds of cannabis-related violations of the CSA.

Despite these laws, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a memorandum on February 14, 2014 (the "FinCEN Memorandum") outlining the pathways for financial institutions to bank state-sanctioned cannabis businesses in compliance with federal enforcement priorities. Concurrently with the FinCEN Memorandum, the DOJ issued supplemental guidance directing federal prosecutors to consider the federal enforcement priorities enumerated in the Cole Memo with respect to federal anti-money laundering, unlicensed money transmitter and Bank Secrecy Act offenses based on cannabis-related violations of the CSA. The FinCEN Memorandum sets forth extensive requirements for financial institutions to meet if they want to offer bank accounts to cannabis-related businesses and echoed the enforcement priorities of the Cole Memo. Under these guidelines, financial institutions must submit a Suspicious Activity Report ("SAR") in connection with all cannabis-related banking activities by any client of such financial institution, in accordance with federal anti-money laundering laws. These cannabis-related SARs are divided into three categories – cannabis limited, cannabis priority, and cannabis terminated – based on the financial institution's belief that the business in question follows state law, is operating outside of compliance with state law, or where the banking relationship has been terminated, respectively. This is a level of scrutiny that is far beyond what is expected of any normal banking relationship.

As a result, many banks are hesitant to offer any banking services to cannabis-related businesses, including opening bank accounts. While we currently maintain banking relationships, our inability to maintain those accounts or the lack of

[Table of Contents](#)

access to bank accounts or other banking services in the future, would make it difficult for us to operate our business, increase our operating costs, and pose additional operational, logistical and security challenges. Similarly, if our proposed tenants are unable to access banking services, they will not be able to enter into triple-net leasing arrangements with us, as our leases will require rent payments to be made by check or wire transfer.

The rescission of the Cole Memo has not yet affected the status of the FinCEN Memorandum, nor has the Department of the Treasury given any indication that it intends to rescind the FinCEN Memorandum itself. Although the FinCEN Memorandum remains intact, it is unclear whether the current administration will continue to follow the guidelines of the FinCEN Memorandum. The DOJ continues to have the right and power to prosecute crimes committed by banks and financial institutions, such as money laundering and violations of the Bank Secrecy Act, that occur in any state including states that have in some form legalized the sale of cannabis. Further, the conduct of the DOJ's enforcement priorities could change for any number of reasons. A change in the DOJ's priorities could result in the DOJ's prosecuting banks and financial institutions for crimes that were not previously prosecuted.

In addition, for our tenants that are publicly traded companies, securities clearing firms may refuse to accept deposits of securities of those tenants, which may negatively impact the trading and valuations of such tenants and have a material adverse impact on our tenants' ability to finance their operations and growth through the capital markets.

The increased uncertainty surrounding financial transactions related to cannabis activities may also result in financial institutions discontinuing services to the cannabis industry. See Item 1A, "Risk Factors – Risks Relating to Regulation."

Agricultural Regulation

The properties that we acquire are used primarily for cultivation and production of regulated cannabis and are subject to the laws, ordinances and regulations of state, local and federal governments, including laws, ordinances and regulations involving land use and usage, water rights, treatment methods, disturbance, the environment, and eminent domain.

Each governmental jurisdiction has its own distinct laws, ordinances and regulations governing the use of agricultural lands. Many such laws, ordinances and regulations seek to regulate water usage and water runoff because water can be in limited supply, as is the case in certain locations where our properties are located. In addition, runoff from rain or from irrigation is governed by laws, ordinances and regulations from state, local and federal governments. Additionally, if any of the water used on or running off from our properties flows to any rivers, streams, ponds, the ocean or other waters, there may be specific laws, ordinances and regulations governing the amount of pollutants, including sediments, nutrients and pesticides, that such water may contain.

We believe that our existing properties have, and other properties that we acquire in the future will have, sources of water that provide sufficient amounts of water necessary for the current operations at each location. However, should the need arise for additional water from wells and/or surface water sources, we may be required to obtain additional permits or approvals or to make other required notices prior to developing or using such water sources. Permits for drilling water wells or withdrawing surface water may be required by federal, state and local governmental entities pursuant to laws, ordinances, regulations or other requirements, and such permits may be difficult to obtain due to drought, the limited supply of available water within the districts of the states in which our properties are located or other reasons.

In addition to the regulation of water usage and water runoff, state, local and federal governments also seek to regulate the type, quantity and method of use of chemicals and materials for growing crops, including fertilizers, pesticides and nutrient rich materials. Such regulations could include restricting or preventing the use of such chemicals and materials near residential housing or near water sources. Further, some regulations have strictly forbidden or significantly limited the use of certain chemicals and materials. Licenses, permits and approvals must be obtained from governmental authorities requiring such licenses, permits and approvals before chemicals and materials can be used at grow facilities. Reports on the usage of such chemicals and materials must be submitted pursuant to applicable laws, ordinances, and regulations and the terms of the specific licenses, permits and approvals. Failure to comply with laws,

[Table of Contents](#)

ordinances and regulations, to obtain required licenses, permits and approvals or to comply with the terms of such licenses, permits and approvals could result in fines, penalties and/or imprisonment.

The use of land for agricultural purposes in certain jurisdictions is also subject to regulations governing the protection of endangered species. When agricultural lands border, or are in close proximity to, national parks, protected natural habitats or wetlands, the agricultural operations on such properties must comply with laws, ordinances and regulations related to the use of chemicals and materials and avoid disturbance of habitats, wetlands or other protected areas.

Because properties we own may be used for growing cannabis, there may be other additional land use and zoning regulations at the state or local level that affect our properties that may not apply to other types of agricultural uses. For example, certain states in which our properties are located require stringent security systems in place at grow facilities, and require stringent procedures for disposal of waste materials.

As an owner of agricultural lands, we may be liable or responsible for the actions or inactions of our tenants with respect to these laws, regulations and ordinances.

Environmental Matters

Our properties and the operations thereon are subject to federal, state and local environmental laws, ordinances and regulations, including laws relating to water, air, solid wastes and hazardous substances. Our properties and the operations thereon are also subject to federal, state and local laws, ordinances, regulations and requirements related to the federal Occupational Safety and Health Act, as well as comparable state statutes relating to the health and safety of our employees and others working on our properties. Although we believe that we and our tenants are in material compliance with these requirements, there can be no assurance that we will not incur significant costs, civil and criminal penalties and liabilities, including those relating to claims for damages to persons, property or the environment resulting from operations at our properties. Furthermore, many of our properties have been repurposed for regulated cannabis operations, and historically were utilized for other purposes, including heavy industrial uses, which expose us to additional risks associated with historical releases of substances at the properties.

Real Estate Industry Regulation

Generally, the ownership and operation of real properties are subject to various laws, ordinances and regulations, including regulations relating to zoning, land use, water rights, wastewater, storm water runoff and lien sale rights and procedures. These laws, ordinances or regulations, such as the Comprehensive Environmental Response and Compensation Liability Act and its state analogs, or any changes to any such laws, ordinances or regulations, could result in or increase the potential liability for environmental conditions or circumstances existing, or created by tenants or others, on our properties. Laws related to upkeep, safety and taxation requirements may result in significant unanticipated expenditures, loss of our properties or other impairments to operations, any of which would adversely affect our cash flows from operating activities.

Changes to zoning, land use and other laws, ordinances and regulations may also prevent us from leasing a property for regulated cannabis cultivation, processing and/or dispensing in the future. For one of our properties located in San Bernardino, California, as of December 31, 2022, we were evaluating alternative non-cannabis uses for the property, due in part to changes in the zoning of the property that no longer allow for regulated cannabis cultivation and processing.

Our property management activities, to the extent we are required to engage in them due to lease defaults by tenants or vacancies on certain properties, will likely be subject to state real estate brokerage laws and regulations as determined by the particular real estate commission for each state.

Americans with Disabilities Act (“ADA”) and Other Building Regulations

All of our properties are required to comply with the Americans with Disabilities Act (“ADA”), which generally requires that buildings be made accessible to people with disabilities. Compliance with ADA requirements may require

[Table of Contents](#)

removal of access barriers, and noncompliance may result in imposition of fines by the U.S. government or an award of damages to private litigants, or both. The tenants to whom we lease space in our properties are generally obligated by law to comply with the ADA provisions, and typically under tenant leases are obligated to cover costs associated with compliance. We are required to operate the properties in compliance with fire and safety regulations, building codes and other land use regulations, as they may be adopted by governmental entities and become applicable to the properties.

Seasonality

Our business has not been, and we do not expect it to become subject to, material seasonal fluctuations.

Available Information

We make available to the public free of charge through our internet website our Definitive Proxy Statement, Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange as soon as reasonably practicable after we electronically file such reports with, or furnish such reports to, the SEC. Our internet website address is www.innovativeindustrialproperties.com. The SEC also maintains electronic versions of the Company's reports on its website at www.sec.gov. You can also access on our website our Code of Business Conduct and Ethics, Corporate Governance Guidelines, Audit Committee Charter, Compensation Committee Charter, and Nominating and Corporate Governance Committee Charter. The content of our website is not incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the SEC, and any references to our website are intended to be inactive textual references only.

Human Capital

Our employees are our most valuable asset, and we believe we have an inclusive and engaging work environment, where each person is an integrated member of the team and is critical to our company's continued success. We meet regularly as a full team, including throughout the COVID-19 pandemic, where each member is encouraged to actively participate in a wide range of topics relating to our company's execution.

We are also committed to the health and safety of our employees. During the COVID-19 pandemic, we implemented a number of safety protocols to protect our employees, including protocols regarding social distancing and working remotely.

We believe that attracting, developing, engaging and retaining our team is an absolute priority. To that end, we believe we offer a highly competitive compensation (including salary, bonuses and equity) and benefits package for each member of our team, which include the following:

- Comprehensive health insurance, including medical, dental and vision, to each employee and every member of his or her immediate family at no cost to the employee, with the same benefits to every employee, regardless of title;
- Four weeks of paid time off each year for each employee (increasing to five weeks after five years of service and to six weeks after ten years of service), which are in addition to Company holidays;
- A severance plan applicable to all non-executive employees that assists with each employee's financial security in the event his or her employment is terminated without cause or he or she resigns for good reason;
- A 401(k) plan with matching contributions from the Company;
- Disability insurance;

[Table of Contents](#)

- Company sponsorship of continuing education courses related to our Company's business, including commercial real estate, cannabis, property management, legal and accounting courses;
- Company reimbursement of up to \$200 per year for each employee's health and wellness activities, materials, equipment and/or classes; and
- Matching contribution by the Company, dollar-for-dollar, up to \$2,500 per year per employee for donations to qualifying educational institutions.

We also coordinate periodic team and individual community giving activities (both in terms of hands-on volunteering and continued financial contributions), soliciting input from our employees regarding charitable organizations and community activities that they would like to support.

We are also proud to be an equal opportunity workplace and employer. We are committed to the principle of equal employment opportunity for all employees and to providing employees with an inclusive work environment free of discrimination and harassment. All employment decisions are based on qualifications, merit and business needs, without regard to race, color, creed, gender, religion, sex, national origin, ancestry, pregnancy, age, marital status, registered domestic partner status, sexual orientation, gender identity, protected medical condition, genetic information, physical or mental disability, veteran status, or any other status protected by the laws or regulations in the locations where we operate.

ITEM 1A. RISK FACTORS

Certain factors may have a material adverse effect on our business, financial condition, and results of operations. You should consider carefully the risks and uncertainties described below, in addition to other information contained in this Annual Report on Form 10-K, including our consolidated financial statements and related notes. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. If any of the following risks actually occurs, our business, financial condition, results of operations, and future prospects could be materially and adversely affected. In that event, the trading price of our common stock could decline, and you could lose part or all of your investment.

Risk Factors Summary

The following is a summary of the principal risks and uncertainties that could adversely affect our business, cash flows, financial condition and/or results of operations, and these adverse impacts may be material. This summary is qualified in its entirety by reference to the more detailed descriptions of the risks and uncertainties included in this Item 1A below and you should read this summary together with those more detailed descriptions. These principal risk and uncertainties relate to, among other things:

Risks Related to Our Business

- Many of our tenants are, and we expect that many of our future tenants will be, companies with limited histories of operations and may be unable to pay rent with funds from operations or at all.
- The inability of any single tenant to make its lease payments could adversely affect our business.
- We are focused on properties leased to licensed cannabis operators, and a decrease in demand for these types of facilities would have a greater impact on us than if we had a more diversified property portfolio.
- Our real estate investments consist of primarily properties suitable for cultivation and production of cannabis, which may be difficult to sell or re-lease upon tenant defaults or lease terminations.
- We have a limited operating history and may not be able to continue to operate our business successfully.
- The assets we acquire may be subject to impairment charges.
- We have identified a material weakness in our system of internal controls. If not remediated, this material weakness could result in material misstatements in our consolidated financial statements.
- We face significant risks associated with the development and redevelopment of properties that we acquire.

[Table of Contents](#)

- We are currently subject to securities lawsuits and we may be subject to litigation in the future, which may divert management's attention and have a material adverse effect on us.
- Inflation may adversely affect our business and our tenants' financial condition and results of operations.
- Competition for the acquisition of properties suitable for regulated cannabis operations and alternative financing sources for licensed operators may make new acquisitions difficult or less economically attractive.
- Our growth will depend upon future acquisitions of regulated cannabis facilities.
- There may only be a limited number of cannabis facilities operated by suitable tenants available for acquisition.
- Our and our tenants' businesses may be materially and adversely affected by global pandemics.
- Our tenants may be unable to renew or otherwise maintain their licenses for their cannabis operations.
- We acquire our properties "as-is," which increases the risk of costs to remedy defects without recourse.
- Our property portfolio is and will be geographically concentrated in certain states.
- Some of our tenants could be susceptible to bankruptcy.
- Our tenants may be subject to Section 280E of the Internal Revenue Code of 1986, as amended (the "Code").
- We have acquired and may continue to acquire and lease cannabis retail stores and dispensaries, which present additional risks in comparison to properties for the cultivation and production of regulated cannabis.
- We are exposed to the potential impacts of future climate change.
- Liability for uninsured losses could adversely affect our financial condition.
- Our properties' access to adequate water and power supplies could be interrupted.
- We may have a difficult time obtaining the insurance policies with our focus on the regulated cannabis industry.
- Construction loans involve an increased risk of loss and other risks that are different from owning properties.
- We may purchase properties subject to ground leases or engage in other transactions involving ground leases.

Risks Related to Regulation

- Cannabis remains illegal under federal law, and therefore, strict enforcement of federal laws regarding cannabis would likely result in our inability and the inability of our tenants to execute our respective business plans.
- Certain of our tenants engage in operations for the adult-use cannabis industry, which may subject us and our properties to additional risks associated with such adult-use cannabis operations.
- New laws adverse to the business of our tenants may be enacted, and current favorable national, state or local laws or enforcement guidelines relating to cannabis operations may be modified or eliminated in the future.
- Our ability to grow our business depends on state laws pertaining to the cannabis industry.
- U.S. Food and Drug Administration ("FDA") regulation of cannabis facilities could negatively affect the regulated cannabis industry.
- We and our tenants may have difficulty accessing the service of banks and other financial institutions.
- Property owners located in close proximity to our properties may assert claims against our cannabis facilities.
- Laws and regulations affecting the regulated cannabis industry are constantly changing, which could materially adversely affect our operations, and we cannot predict the impact that future regulations may have on us.
- Assets leased to cannabis businesses may be forfeited to the federal government.
- We may have difficulty accessing bankruptcy courts.
- The properties that we acquire are subject to extensive regulations, which may result in significant costs.
- Compliance with environmental laws could materially increase our operating expenses.

Risks Related to Financing Our Business

- Our growth depends on external sources of capital, which may not be available on favorable terms or at all.
- Our existing and future indebtedness could reduce our distributable cash and expose us to default risk.
- A downgrade in our investment grade credit rating could adversely affect our business and financial condition.
- Our Notes due 2026 include restrictive covenants that limit our operational flexibility.

Risks Related to Our Organization and Structure

- Our senior management team manages our portfolio subject to very broad investment guidelines.
- Our board of directors may change our investment objectives and strategies without stockholder consent.
- Certain provisions of Maryland law could inhibit changes in control.
- Our authorized but unissued shares of common and preferred stock may prevent a change in our control.
- Severance agreements with our executive officers could be costly and prevent a change in our control.
- We depend on our Operating Partnership for cash flow and are structurally subordinated in right of payment.

[Table of Contents](#)

- Our Operating Partnership may issue additional limited partnership interests to third parties without the consent of our stockholders, which would reduce the distributions we can make to our stockholders.
- If we issue limited partnership interests in our Operating Partnership in exchange for property, the value placed on such partnership interests may not accurately reflect their market value, which may dilute your interest in us.
- Our rights and the rights of our stockholders to take action against our directors and officers are limited.
- Our charter provisions make it difficult to remove directors, and to effect changes in management as a result.
- Ownership limitations may restrict change in control or business combination opportunities in which our stockholders might receive a premium for their shares.
- We plan to continue to operate our business so as not to require registration under the Investment Company Act.

Risks Related to Our Securities

- The market prices and trading volumes of our capital stock have been and may continue to be volatile.
- Capital stock eligible for future sale may have material and adverse effects on our share price.
- We cannot assure you of our ability to make distributions in the future.
- Our charter permits us to pay distributions from any source and, as a result, the amount of distributions paid at any time may not reflect the performance of our properties or as cash flow from operations.
- The market price of our capital stock could be materially, adversely affected by our level of cash distributions.

Risks Related to Our Taxation as a REIT

- Our failure to qualify as a REIT would reduce our distributable cash and negatively impact us.
- The REIT distribution requirements could adversely affect our ability to execute our business plan, and require us to make unfavorable borrowing decisions or subject us to tax.
- If Section 280E of the Code applies to us, tax deductions may be disallowed, resulting in federal income tax and potentially jeopardizing our REIT status.
- Complying with REIT requirements may cause us to forego attractive business opportunities or asset sales.
- The tax on prohibited transactions could limit what transactions we make or subject us to a 100% penalty tax.
- Our board of directors has the ability to revoke our REIT election without stockholder approval.
- Dividends payable by REITs do not qualify for the reduced tax rates on dividends from regular corporations.
- REIT requirements may limit our ability to hedge our liabilities effectively and result in tax liabilities.
- Re-characterization of sale-leaseback transactions may cause us to lose our REIT status.
- Non-U.S. stockholders will generally be subject to withholding tax with respect to our ordinary dividends.
- Legislative, regulatory or administrative changes could adversely affect us or our stockholders.

General Risk Factors

- We are dependent on our key personnel for our success.
- The occurrence of cyber incidents or cyberattacks could disrupt our operations and damage our business.
- Contingent or unknown liabilities could materially and adversely affect our business.

Risks Related to Our Business

Many of our existing tenants are, and we expect that many of our future tenants will be, companies with limited histories of operations and may be unable to pay rent with funds from operations or at all, which could adversely affect our cash available to make distributions to our stockholders or otherwise impair the value of our common stock.

Single tenants currently occupy our properties generally, and we expect that single tenants will occupy our properties that we acquire in the future. Therefore, the success of our investments will be materially dependent on the financial stability of these tenants. We rely on our management team to perform due diligence investigations of our potential tenants, related guarantors and their properties, operations and prospects, of which there is generally little or no publicly available operating and financial information. We may not learn all of the material information we need to know regarding these businesses through our investigations, and these businesses are subject to numerous risks and uncertainties, including but not limited to regulatory risks and the rapidly evolving market dynamics of each state's regulated cannabis program. As a result, it is possible that we could enter into a sale-leaseback arrangement with tenants or otherwise lease properties to tenants that ultimately are unable to pay rent to us, which could adversely impact our cash available for distributions.

[Table of Contents](#)

Many of our existing tenants are, and we expect that many of our future tenants will be, companies with limited histories of operations that are not profitable when they enter triple-net leasing arrangements with us and therefore, may be unable to pay rent with funds from operations. Many of our current tenants are not profitable and have experienced losses since inception, or have been profitable for only a short period of time. As a result, many of our current tenants have made, and we expect that many of our future tenants will make, initial rent payments to us from proceeds from the sale of the property, in the case of sale-leaseback transactions, or other cash on hand, including cash received from debt financings.

In addition, in general, our tenants are more vulnerable to adverse conditions resulting from federal and state regulations affecting their businesses or industries or other changes in the marketplace for their products, and have limited access to traditional forms of financing. For example, during the COVID-19 pandemic, our tenants were generally not able to access federal assistance programs that were available to companies in other industries, due to cannabis being a Schedule 1 controlled substance under the CSA. The success of our tenants will also heavily depend on the growth and development of the state markets in which the tenants operate, many of which have a very limited history or are still in the stages of establishing the regulatory framework. For example, in California, the illicit market for cannabis remains a much larger portion of overall sales in the state according to Global Go Analytics, 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. In recent months, pricing for regulated cannabis products has dropped significantly, driven in part by the lack of effective enforcement on the illicit market, while input costs, including labor, supplies and construction materials, have increased significantly as a result of the broader higher inflationary environment.

In our evaluation of our existing leases with tenants at our properties, we record associated revenue on a cash basis due to the uncertainty of collectability of lease payments from tenants due to the U.S. federal regulatory uncertainty surrounding the regulated cannabis industry and our tenants' limited operating history (for more information, see Note 2 "Summary of Significant Accounting Policies and Procedures and Recent Accounting Pronouncements – Revenue Recognition" in our consolidated financial statements included in this report).

Some of our tenants may be subject to significant debt obligations and may rely on debt financing to make rent payments to us. Tenants that are subject to significant debt obligations may be unable to make their rent payments if there are adverse changes in their business plans or prospects, the regulatory environment in which they operate or in general economic conditions. In addition, the payment of rent and debt service may reduce the working capital available to tenants for the start-up phase of their business. Furthermore, we may be unable to monitor and evaluate tenant credit quality on an on-going basis.

According to Viridian, total equity and debt capital raising for public and private cannabis companies in North America decreased by more than 65% in 2022 versus 2021. Even more pronounced, total capital raised for the U.S. regulated cannabis cultivation and retail sector was down over 70% in 2022 versus 2021, with equity capital raised in the sector down over 96% and no equity deal in 2022 raising more than \$25 million, according to Viridian.

Any lease payment defaults by a tenant could adversely affect our cash flows and cause us to reduce the amount of distributions to stockholders. In the event of a default by a tenant, we may also experience delays in enforcing our rights as landlord and may incur substantial costs in protecting our investment and re-leasing our property as operators of regulated cannabis cultivation and production facilities are generally subject to extensive state licensing requirements, including limited licenses in certain states. In addition, applicable state licensing authorities may have little experience re-leasing a cannabis property, which may extend the delays we experience in re-leasing a property. Furthermore, we will not operate any of the facilities that we purchase.

In July 2022, Kings Garden, a tenant of ours at six properties that we own in southern California, defaulted on its obligations to pay rent.

In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan. In February 2023, Parallel defaulted on its obligations to pay rent at one of our properties in Texas. See Part I, Item 3. Legal Proceedings and Note

[Table of Contents](#)

11 “Commitments and Contingencies — Litigation” to our consolidated financial statements for more information regarding Kings Garden, Parallel and Green Peak.

Because we lease our properties to a limited number of tenants, and to the extent we depend on a limited number of tenants in the future, the inability of any single tenant to make its lease payments could adversely affect our business and our ability to make distributions to our stockholders.

As of December 31, 2022, we owned 110 properties. Five of our tenants, PharmaCann (at eleven of our properties), Parallel (at four of our properties), Ascend (at four of our properties), Green Thumb (at three of our properties) and Trulieve (at six of our properties), represented approximately 14%, 10%, 9%, 7% and 7%, respectively, of our rental revenues (including tenant reimbursements) for the twelve months ended December 31, 2022. Lease payment defaults by any of our tenants or a significant decline in the value of any single property would materially adversely affect our business, financial position and results of operations, including our ability to make distributions to our stockholders. Our lack of diversification also increases the potential that a single underperforming investment or tenant could have a material adverse effect on our cash flows and the price we could realize from the sale of our properties. Any adverse change in the financial condition of any of our tenants, including but not limited to the state cannabis markets not developing and growing in ways that we or our tenants projected, or any adverse change in the political climate regarding cannabis where our properties are located, would subject us to a significant risk of loss.

In addition, failure by any of our tenants to comply with the terms of its lease agreement with us could require us to find another lessee for the applicable property. We may experience delays in enforcing our rights as landlord and may incur substantial costs in protecting our investment and re-leasing that property. Furthermore, we cannot assure you that we will be able to re-lease that property for the rent we currently receive, or at all, or that a lease termination would not result in our having to sell the property at a loss. The result of any of the foregoing risks could materially and adversely affect our business, financial condition and results of operations and our ability to make distributions to our stockholders.

In July 2022, Kings Garden, a tenant of ours at six properties that we own in southern California, defaulted on its obligations to pay rent.

In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan. In February 2023, Parallel defaulted on its obligations to pay rent at one of our properties in Texas. See Part I, Item 3. Legal Proceedings and Note 11 “Commitments and Contingencies — Litigation” to our consolidated financial statements for more information regarding Kings Garden, Parallel and Green Peak.

Because our real estate investments consist of primarily industrial and greenhouse properties suitable for cultivation and production of cannabis, our rental revenues are significantly influenced by demand for these facilities generally, and a decrease in such demand would likely have a greater adverse effect on our rental revenues than if we owned a more diversified real estate portfolio.

Because our portfolio of properties primarily consists of industrial and greenhouse properties used in the regulated cannabis industry, we are subject to risks inherent in investments in a single industry. A decrease in the demand for cannabis cultivation and processing facilities would have a greater adverse effect on our rental revenues than if we owned a more diversified real estate portfolio. Demand for cannabis cultivation and processing facilities has been and could be adversely affected by changes in current favorable state or local laws relating to cultivation and production of cannabis or any change in the federal government’s current enforcement posture with respect to state-licensed cannabis operations, among others, including but not limited to changes to local zoning and other laws that no longer allow a facility to be utilized for regulated cannabis activities. To the extent that any of these conditions occur, they are likely to affect demand and market rents for cannabis cultivation and processing facilities, which could cause a decrease in our rental revenue. Any such decrease could impair our ability to make distributions to you. Other than with respect to our property located in San Bernardino, California, we do not currently and do not expect in the future to invest in other real estate or businesses to hedge against the risk that industry trends might decrease the profitability of our facilities leased for cannabis operations.

Our real estate investments consist of primarily industrial and greenhouse properties suitable for cultivation and production of cannabis, which may be difficult to sell or re-lease upon tenant defaults or lease terminations, either of which would adversely affect returns to stockholders.

While our business objectives consist of principally acquiring and deriving rental income from industrial and greenhouse properties used in the regulated cannabis industry, we expect that at times we will deem it appropriate or desirable to sell or otherwise dispose of certain properties we own. These types of properties are relatively illiquid compared to other types of real estate and financial assets. This illiquidity could limit our ability to quickly dispose of properties in response to changes in regulatory, economic or other conditions. Therefore, our ability at any time to sell assets may be restricted and this lack of liquidity may limit our ability to make changes to our portfolio promptly, which could materially and adversely affect our financial performance. We cannot predict the various market conditions affecting the properties that we expect to acquire that will exist in the future. Due to the uncertainty of regulatory and market conditions which may affect the future disposition of the real estate assets we expect to acquire, we cannot assure you that we will be able to sell these assets at a profit in the future. Accordingly, the extent to which we will realize potential appreciation (or depreciation) on the real estate investments we have acquired and expect to acquire will depend upon regulatory and other market conditions. In addition, in order to maintain our REIT status, we may not be able to sell properties when we would otherwise choose to do so, due to market conditions or changes in our strategic plan.

Furthermore, we may be required to make expenditures to correct defects or to make improvements before a property can be sold and we cannot assure you that we will have funds available to correct such defects or to make such improvements. With these kinds of properties, if the current lease is terminated or not renewed, we may be required to make expenditures and rent concessions in order to lease the property to another tenant.

In addition, in the event we are forced to sell or re-lease the property, we may have difficulty finding qualified purchasers who are willing to buy the property or tenants who are willing to lease the property on terms that we expect, or at all. As our properties are concentrated in the regulated cannabis industry, a shift in property preferences by regulated cannabis operators, including but not limited to changing preferences regarding location and types of improvements, could have a significant negative impact on the desirability of our properties to prospective tenants when we need to re-lease them, in addition to other challenges, such as obtaining the necessary state and local authorizations for a new tenant to commence operations at the property. These and other limitations may affect our ability to sell or re-lease properties, which may adversely affect returns to our stockholders. Certain regulated cannabis operators have recently 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.

In July 2022, Kings Garden, a tenant of ours at six properties that we own in southern California, defaulted on its obligations to pay rent. In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan. In February 2023, Parallel defaulted on its obligations to pay rent at one of our properties in Texas. See Part I, Item 3. Legal Proceedings and Note 11 "Commitments and Contingencies — Litigation" to our consolidated financial statements for more information regarding Kings Garden, Parallel and Green Peak.

We have a limited operating history, and may not be able to continue to operate our business successfully or generate sufficient cash flow to sustain distributions to our stockholders.

We completed our initial public offering and commenced real estate operations with the acquisition of our first property in December 2016, and have a limited operating history. We are subject to many of the business risks and uncertainties associated with any new business enterprise. Furthermore, our properties are concentrated in the regulated cannabis industry, an industry in its very early stages of development, and we cannot predict how tenant demand and competition for these properties will change over time. We cannot assure you that we will be able to operate our business successfully or profitably or find additional suitable investments. Our ability to provide attractive risk-adjusted returns to our stockholders over the long term is dependent on our ability both to generate sufficient cash flow to pay an attractive dividend and to achieve capital appreciation, and we cannot assure you we will do either. There can be no assurance that

we will be able to continue to generate sufficient revenue from operations to pay our operating expenses and make distributions to stockholders. The results of our operations and the execution on our business plan depend on several factors, including the availability of additional opportunities for investment, the performance of our existing properties and tenants, the evolution of tenant demand for regulated cannabis facilities, competition, the evolution of alternative capital sources for potential tenants, the availability of adequate equity and debt financing, the federal and state regulatory environment relating to the regulated cannabis industry, conditions in the financial markets and economic conditions.

The assets we acquire may be subject to impairment charges.

We periodically evaluate the real estate investments we acquire and other assets for impairment indicators. The judgment regarding the existence of impairment indicators is based upon factors such as market conditions, tenant performance and legal structure. For example, the termination of a lease by a tenant may lead to an impairment charge. If we determine that an impairment has occurred, we would be required to make an adjustment to the net carrying value of the asset which could have an adverse effect on our results of operations in the period in which the impairment charge is recorded.

In July 2022, Kings Garden, a tenant of ours at six properties that we own in southern California, defaulted on its obligations to pay rent. In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan. In February 2023, Parallel defaulted on its obligations to pay rent at one of our properties in Texas. See Part I, Item 3. Legal Proceedings and Note 11 “Commitments and Contingencies — Litigation” to our consolidated financial statements for more information regarding Kings Garden, Parallel and Green Peak. While we have not determined that an impairment has occurred with respect to these properties, as we periodically evaluate these and other properties, we may be required to make an adjustment to the net carrying value of one or more of these properties in the future.

We have identified a material weakness in our system of internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002. If not remediated, this material weakness could result in material misstatements in our consolidated financial statements. We may be unable to develop, implement and maintain appropriate controls in future periods.

As previously disclosed in our Quarterly Report on Form 10-Q for the period ending September 30, 2022, our management identified a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected and corrected on a timely basis. Management has concluded that, because of this material weakness, our internal control over financial reporting was not effective as of December 31, 2022. These operational deficiencies related to the Company’s reviews and approvals of requests for funding disbursements by the Company for tenant improvements at the Company’s properties previously leased to Kings Garden. As a result of the material weakness, the Company’s management, under the supervision of the Audit Committee of the Board of Directors and with participation of the Company’s Chief Executive Officer and Chief Financial Officer, concluded that the Company’s internal control over financial reporting was not effective as of December 31, 2022.

Although we are working to remedy the ineffectiveness of the Company’s internal control over financial reporting, there can be no assurance as to when the remediation plan will be fully developed and implemented. Until our remediation plan is fully implemented, our management will continue to devote significant time, attention and financial resources to these efforts. If we do not complete our remediation in a timely fashion, or at all, or if our remediation plan is inadequate, there will continue to be an increased risk that our future consolidated financial statements could contain errors that will be undetected. Further and continued determinations that there are one or more material weaknesses in the effectiveness of the Company’s internal control over financial reporting could also reduce our ability to obtain financing or could increase the cost of any financing we obtain and require additional expenditures of both money and our management’s time to comply with applicable requirements. For more information relating to the Company’s internal control over financial reporting, the material weakness that existed as of December 31, 2022 and the remediation activities undertaken by us, see Part II, Item 9A, “Controls and Procedures” of this Annual Report on Form 10-K.

We face significant risks associated with the development and redevelopment of properties that we acquire.

In many instances, we engage in development or redevelopment of properties that we acquire. Development and redevelopment activities entail risks that could adversely impact our financial condition and results of operations, including:

- construction costs, which may exceed our or our tenant's original estimates due to increases in materials, labor or other costs, which could make the project less profitable for our tenant, require us or our tenant to commit additional funds to complete the project and adversely impact our tenant's business and prospects as a result;
- permitting or construction delays, which may result in increased project costs, as well as deferred revenue and delayed commencement of operations by our tenant;
- unavailability of raw materials when needed, which may result in project delays, stoppages or interruptions, which could make the project less profitable;
- claims for warranty, product liability and construction defects after a property has been built;
- health and safety incidents and site accidents;
- poor performance or nonperformance by, or disputes with, any of our contractors, subcontractors or other third parties on whom we rely;
- a contractor, subcontractor or other third party on whom we rely files for bankruptcy or commits fraud before completing a project that we have funded in part or in full;
- unforeseen engineering, environmental or geological problems, which may result in delays or increased costs;
- changes in local zoning, permitting and other requirements which may impact the permitted use or scope of a project;
- labor stoppages, slowdowns or interruptions;
- a default on an existing lease of a property under development or redevelopment by the tenant, exposing us to potential vacancy for a property that is not ready for its intended use;
- liabilities, expenses or project delays, stoppages or interruptions as a result of challenges by third parties in legal proceedings; and
- weather-related and geological interference, including hurricanes, landslides, earthquakes, floods, drought, wildfires and other events, which may result in delays or increased costs.

The realization of any of the risks above or other delays in development and redevelopment activities at a property may also materially adversely impact our tenant's ability to commence, continue or expand its operations, which may result in that tenant defaulting on its rent obligations to us. As of February 28, 2023, we had properties consisting of an aggregate of approximately 1.6 million rentable square feet under development or redevelopment, and we had committed

to provide construction funding and fund tenant improvements at our properties in the future totaling up to approximately \$131.8 million.

For one of our properties located in San Bernardino, California, as of December 31, 2022, we are evaluating alternative non-cannabis uses for the property, due in part to changes in the zoning of the property that no longer allow for regulated cannabis cultivation and processing.

In November 2022, Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan, which was under redevelopment, and in February 2023, Parallel defaulted on its obligations to pay rent at one of our properties in Texas, which was under development.

Ongoing inflation for construction and labor costs, labor shortages and global supply chain issues also continue to adversely impact costs and timing for completion of our development and redevelopment projects, which are resulting in cost overruns and delays in commencing operations on certain projects.

We are currently subject to securities lawsuits and we may be subject to similar or other litigation in the future, which may divert management's attention and have a material adverse effect on our business, financial condition and results of operations.

A purported securities class action lawsuit has been filed against us and certain of our executive officers alleging that the Company made false or misleading statements regarding its business. 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 August 7, 2020 and August 4, 2022. Derivative lawsuits also have been filed against us and certain of our officers and directors asserting putative derivative claims for breach of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, and waste of corporate assets against our directors and certain of our officers. According to the filed complaint, 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. See Note 11 "Commitments and Contingencies" for a full description of these actions.

We will continue to incur legal fees in connection with these pending cases, including expenses for the reimbursement of legal fees of our officers and directors under indemnification obligations. The expense of continuing to defend such litigation may be significant. We intend to defend these lawsuits vigorously, but there can be no assurance that we will be successful in any defense. If any of the lawsuits are adversely decided, we may be liable for significant damages directly or under our indemnification obligations, which could adversely affect our business, results of operations and cash flows. Further, the amount of time that will be required to resolve these lawsuits is unpredictable and these actions may divert management's attention from the day-to-day operations of our business, which could adversely affect our business, results of operations and cash flows.

We cannot predict the outcome of these lawsuits and we may be subject to other similar securities litigation in the future. Monitoring and defending against legal actions, whether or not meritorious, is time-consuming for our management and detracts from our ability to fully focus our internal resources on our business activities. In addition, we may incur substantial legal fees and costs in connection with litigation. Although we have insurance, coverage could be denied or prove to be insufficient. We are not currently able to estimate the possible cost to us from the currently pending lawsuits, and we cannot be certain how long it may take to resolve these matters or the possible amount of any damages that we may be required to pay. We have not established any reserves for any potential liability relating to these or future lawsuits. It is possible that we could, in the future, incur judgments or enter into settlements of claims for monetary damages. A decision adverse to our interests on these actions could result in the payment of substantial damages and could have a material adverse effect on our business, results of operations and financial condition. In addition, the uncertainty of the currently pending lawsuits could lead to volatility in our stock price. The ultimate outcome of litigation could have a material adverse effect on our business and the trading price for our securities.

Inflation may adversely affect our business and our tenants' financial condition and results of operations.

Increased inflation could have a more pronounced negative impact on any variable rate debt we incur in the future and on our results of operations. We also enter into leases that generally provide for fixed increases in rent. During times when inflation is greater than increases in rent as provided for in our leases, rent increases may not keep up with the rate of inflation. Likewise, even though net leases reduce our exposure to rising property expenses due to inflation, substantial inflationary pressures and increased costs may have an adverse impact on our tenants if increases in their operating expenses exceed increases in their revenues, which may adversely affect our tenants' ability to pay rent. Substantial inflation in the cost of construction materials and labor may also adversely impact our and our tenants' ability to complete building projects on budget and on time, which may also materially adversely impact our tenants' ability to commence operations of facilities and consequently our tenants' ability to pay rent.

Competition for the acquisition of properties suitable for the retail sale, cultivation or production of regulated cannabis and alternative financing sources for licensed operators may impede our ability to make acquisitions or increase the cost of these acquisitions, which could adversely affect our operating results and financial condition.

We compete for the acquisition of properties suitable for the retail sale, cultivation or production of regulated cannabis with other entities engaged in retail, agricultural and real estate investment activities, including corporate agriculture companies, cultivators and producers of cannabis, private equity investors, and other real estate investors (including public and private REITs). These competitors may prevent us from acquiring desirable properties, may cause an increase in the price we must pay for properties or may result in us having to lease our properties on less favorable terms than we expect. Our competitors may have greater financial and operational resources than we do and may be willing to pay more for certain assets or may be willing to accept more risk than we believe can be prudently managed. In particular, larger companies may enjoy significant competitive advantages that result from, among other things, a lower cost of capital and enhanced operating efficiencies. Our competitors may also adopt transaction structures similar to ours, which would decrease our competitive advantage in offering flexible transaction terms. In addition, due to a number of factors, including but not limited to potential greater clarity of the laws and regulations governing cannabis by state and federal governments, the number of entities and the amount of funds competing for suitable investment properties may increase, resulting in increased demand and increased prices paid for these properties. If we pay higher prices for properties or enter into leases for such properties on less favorable terms than we expect, our profitability and ability to generate cash flow and make distributions to our stockholders may decrease.

We also compete as a provider of capital to regulated cannabis operators with alternative financing sources to these companies, including both equity and debt financing alternatives. For example, many larger, publicly traded multi-state cannabis operators are able to raise significant capital through public equity offerings, in addition to access to significant debt financing options. Furthermore, changes in federal regulations pertaining to cannabis could also lead to increased access to U.S. capital markets for our competitors and for regulated cannabis operators (including but not limited to access to the Nasdaq Stock Market and/or the New York Stock Exchange).

Increased competition for properties as a result of greater clarity of the federal regulatory environment may also preclude us from acquiring those properties that would generate attractive returns to us. If any of the proposed bills in Congress focused on the regulated cannabis industry became law, there could be further increased competition for the acquisition of properties that can be leased to licensed cannabis operators, consolidation of cannabis cultivation facilities for more cost efficient, larger scale production and manufacturing may occur (including consolidation that may occur as a result of authorization of interstate commerce in cannabis), and such operators would have greater access to alternative financing sources with lower costs of capital. These factors may reduce the number of operators that wish to enter into lease transactions with us or renew leases with us, or may result in us having to enter into leases on less favorable terms with tenants, each of which may significantly adversely impact our profitability and ability to generate cash flow and make distributions to our stockholders.

Our growth will depend upon future acquisitions of regulated cannabis facilities, and we may be unable to consummate acquisitions on advantageous terms.

Our growth strategy is focused on the acquisition of specialized industrial real estate assets on favorable terms as opportunities arise. Our ability to acquire these real estate assets on favorable terms is subject to the following risks:

- competition from other potential acquirers or increased availability of alternative debt and equity financing sources for tenants may significantly increase the purchase price of a desired property and/or negatively impact the lease terms we are able to secure with our tenants;
- we may not successfully purchase and lease our properties to meet our expectations;
- we may be unable to obtain the necessary equity or debt financing to consummate an acquisition on satisfactory terms or at all;
- agreements for the acquisition of properties are typically subject to closing conditions, including satisfactory completion of due diligence investigations, and we may spend significant time and money and divert management attention on potential acquisitions that we do not consummate; and
- we may acquire properties without any recourse, or with only limited recourse, for liabilities, whether known or unknown, against the former owners of the properties.

Our failure to consummate acquisitions on advantageous terms without substantial expense or delay would impede our growth and negatively affect our results of operations and our ability to generate cash flow and make distributions to our stockholders.

There may only be a limited number of regulated cannabis facilities operated by suitable tenants available for us to acquire, which could adversely affect the return on our common stock.

We target regulated cannabis facilities for acquisition and leasing to licensed operators under triple-net lease agreements. In light of the current regulatory landscape regarding regulated cannabis, including but not limited to, the rigorous state licensing processes, limits on the number of licenses granted in certain states and in counties within such states, zoning regulations related to regulated cannabis facilities, the inability of potential tenants to open bank accounts necessary to pay rent and other expenses and the ever-changing federal and state regulatory landscape, we may have only a limited number of regulated cannabis facilities available to purchase that are operated by licensees that we believe would be suitable tenants. These tenants may also have increased access to alternative equity and debt financing sources over time, which may limit our ability to negotiate leasing arrangements that meet our investment criteria. Our inability to locate suitable investment properties and tenants would have a material adverse effect on our ability to generate cash flow and make distributions to our stockholders.

Our and our tenants' businesses may be materially and adversely affected by the impact of global pandemics.

We cannot predict the extent to which global pandemics may impact our business and operating results and those of our tenants, but their impact may include the following:

- a complete or partial closure of, or other operational issues at, one or more of our properties resulting from government or tenant actions;
- the temporary inability of consumers and patients to purchase our tenant's cannabis products due to a number of factors, including but limited to illness, dispensary closures or limitations on operations (including but not limited to shortened operating hours, social distancing requirements and mandated "curbside only" pickup), quarantine, financial hardship, and "stay at home" orders, could severely impact our tenants' businesses,

[Table of Contents](#)

financial condition and liquidity and may cause one or more of our tenants to be unable to meet their obligations to us in full, or at all, or to otherwise seek modifications of such obligations;

- difficulty accessing equity and debt capital on attractive terms, or at all, and a severe disruption and instability in the global financial markets or deteriorations in credit and financing conditions may affect our access to capital necessary to fund business operations and our tenants' ability to fund their business operations and meet their obligations to us;
- workforce disruptions for our tenants, as a result of infections, quarantines, stay at home orders or other factors, could result in a material reduction in our tenants' cannabis cultivation, manufacturing, distribution and/or sales capacity;
- because of the federal regulatory uncertainty relating to the regulated cannabis industry, our tenants may not be eligible for financial relief available to other businesses, including federal assistance programs;
- restrictions on public events for the regulated cannabis industry limit the opportunity for our tenants to market and sell their products and promote their brands;
- delays in construction at our properties may adversely impact our tenants' ability to commence operations and generate revenues from projects, including but not limited to delays caused by:
 - construction moratoriums by local, state or federal government authorities;
 - delays by applicable governmental authorities in providing the necessary authorizations to continue construction or commence operations;
 - reductions in construction team sizes to effectuate social distancing and other requirements;
 - infection by one or more members of a construction team necessitating a partial or full shutdown of construction; and
 - manufacturing and supply chain disruptions for materials sourced from other geographies which may be experiencing shutdowns and/or restrictions on transportation of such materials;
- a general decline in business activity in the regulated cannabis industry would adversely affect our ability to grow our portfolio of regulated cannabis properties; and
- the potential negative impact on the health of our personnel, particularly if a significant number of them are impacted, would result in a deterioration in our ability to ensure business continuity during a disruption.

The extent to which pandemics impact our operations and those of our tenants will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including the scope, severity and duration of the pandemic, the actions taken to contain the outbreak or mitigate its impact, and the extent of the direct and indirect economic effects of the pandemic and containment measures, among others.

Our tenants may be unable to renew or otherwise maintain their licenses or other requisite authorizations for their cannabis operations, which may result in such tenants not being able to operate their businesses and defaulting on their lease payments to us.

Most states where we own properties issue licenses for cannabis operations for a limited period. We rely on our tenants to renew or otherwise maintain the requisite state and local cannabis licenses and other authorizations on a continuous basis. If one or more of our tenants are unable to renew or otherwise maintain its licenses or other state and

local authorizations necessary to continue its cannabis operations, such tenants may default on their lease payments to us.

Any such noncompliance by our tenants of state and local laws, rules and regulations may also subject us, as the owner of such properties, to potential penalties, fines or other liabilities.

Any lease payment defaults by a tenant or additional liability on us could adversely affect our cash flows and cause us to reduce the amount of distributions to stockholders. In the event of a default by a tenant, we may also experience delays in enforcing our rights as landlord and may incur substantial costs in protecting our investment and re-leasing our property as operators of cannabis cultivation and production facilities are generally subject to extensive state licensing requirements, including required state and local authorizations for a new tenant to take over operations at a facility.

In July 2022, Kings Garden, a tenant of ours at six properties that we own in southern California, defaulted on its obligations to pay rent. In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan. In February 2023, Parallel defaulted on its obligations to pay rent at one of our properties in Texas. See Part I, Item 3. Legal Proceedings and Note 11 “Commitments and Contingencies — Litigation” to our consolidated financial statements for more information regarding Kings Garden, Parallel and Green Peak.

We acquired our properties, and expect to acquire other properties, “as-is,” which increases the risk of an investment that requires us to remedy defects or costs without recourse to the prior owner.

We acquired our properties, and expect to acquire other real estate properties, “as is” with only limited representations and warranties from the property seller regarding matters affecting the condition, use and ownership of the property. There may also be environmental conditions associated with properties we acquire of which we are unaware despite our diligence efforts or that we have identified during diligence, including with respect to historical heavy industrial uses of the properties. In particular, cannabis facilities may present environmental concerns of which we are not currently aware. If environmental contamination exists on properties we acquire or develops after acquisition, we could become subject to liability for the contamination. As a result, if defects in the property (including any building on the property) or other matters adversely affecting the property are discovered, including but not limited to environmental matters, we may not be able to pursue a claim for any or all damages against the property seller. Such a situation could harm our business, financial condition, liquidity and results of operations.

Our properties are, and are expected to continue to be, geographically concentrated in states that permit licensed cannabis operations, and we will be subject to social, political and economic risks of doing business in these states and any other state in which we may own property.

As of February 28, 2023, we owned properties in 19 states, and we expect that the properties that we acquire will be geographically concentrated in these states and other states that have established cannabis programs. See “Geographic Concentration” under Item 1, “Business” for a table of properties owned by us and organized by state as of December 31, 2022. Circumstances and developments related to operations in these markets that could negatively affect our business, financial condition, liquidity and results of operations include, but are not limited to, the following factors:

- the state regulated cannabis market fails to develop and grow in ways that we or our tenants projected;
- the responsibility of complying with multiple and, in some respects, conflicting state and federal laws in the United States, including with respect to cultivation and distribution of cannabis, licensing, banking and insurance;
- access to capital may be more restricted, or unavailable on favorable terms or at all in certain locations;
- difficulties and costs of staffing and managing operations;

[Table of Contents](#)

- unexpected changes in regulatory requirements and other laws;
- the impact of national, regional or state specific business cycles and economic instability; and
- potentially adverse tax consequences.

Some of our tenants could be susceptible to bankruptcy, which would affect our ability to generate rents from them and therefore negatively affect our results of operations.

In addition to the risk of tenants being unable to make regular rent payments, certain of our tenants may depend on debt, which could make them especially susceptible to bankruptcy in the event that their cash flows are insufficient to satisfy their debt. Because cannabis remains illegal under federal law, there is no assurance that federal bankruptcy courts will provide relief for parties who engage in cannabis-related businesses. Recent bankruptcy court rulings have denied bankruptcy relief for certain cannabis businesses on the basis that businesses cannot violate federal law and then claim the benefits of federal bankruptcy for such activity and on the basis that courts cannot ask a bankruptcy trustee to take possession of, and distribute cannabis assets, as such action would violate the CSA. Any inability of our tenants to seek bankruptcy protection may impact their ability to secure financing for their operations and prevent our tenants from utilizing the benefits of reorganization of their businesses under bankruptcy protection to operate in a financially sustainable way, thereby reducing the probability that such a tenant would be able to honor its lease obligations with us.

Generally, under bankruptcy law, a tenant who is the subject of bankruptcy proceedings may continue (“assume”) or give up (“reject”) any unexpired lease of non-residential real property. If a bankrupt tenant decides to give up (reject) a lease, any claim for breach of the lease is treated as a general unsecured claim in the tenant’s bankruptcy case, subject to certain exceptions for collateral and guarantees. In the event one of our tenants is permitted to seek bankruptcy protection in the U.S., our general unsecured claim would likely be capped at the amount the tenant owed us for unpaid rent prior to the bankruptcy unrelated to the termination, plus the greater of one year of lease payments or 15% of the lease payments payable under the remaining term of the lease, but in no case more than three years of lease payments. In addition to the cap on our damages for breach of the lease, even if our claim is timely submitted to the bankruptcy court, there is no guaranty that the tenant’s bankruptcy estate would have sufficient funds to satisfy the claims of general unsecured creditors. Finally, a bankruptcy court could re-characterize a net lease transaction as a disguised secured lending transaction. If that were to occur, we would not be treated as the owner of the property, but might have additional rights as a secured creditor. This would mean our claim in bankruptcy court could be limited to the amount we paid for the property, which could adversely impact our financial condition. Any bankruptcy, if allowed, of one of our tenants would result in a loss of lease payments to us, as well as an increase in our costs to carry the property.

Our tenants may be subject to Section 280E of the Code because of the nature of their business activities, which could have an adverse impact on their financial condition due to a disallowance of certain tax deductions.

Section 280E of the Code provides that, with respect to any taxpayer, no deduction or credit is allowed for expenses incurred during a taxable year “in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of Schedule I and II of the CSA) which is prohibited by federal law or the law of any state in which such trade or business is conducted.” Because cannabis is a Schedule I controlled substance under the CSA, Section 280E by its terms applies to the purchase and sale of cannabis products. Our tenants are engaged in the cultivation, processing and sale of cannabis and cannabis-related products, and therefore may be subject to Section 280E. Application of the provisions of Section 280E to our tenants would result in the disallowance of certain tax deductions, including for depreciation or interest expense, which could have an adverse impact on their respective financial condition and ability to make lease payments to us. Any lease payment defaults by a tenant could adversely affect our results of operations and cash flows, and cause us to reduce the amount of distributions to our stockholders.

We have acquired and may continue to acquire cannabis retail stores and dispensaries and enter into leases with licensed operators for those properties, which present additional risks and challenges in comparison to properties for the cultivation and production of cannabis.

We have acquired and may continue to acquire cannabis retail stores and dispensaries and enter into leases with licensed operators for those locations. Cannabis retail stores and dispensaries entail risks that could adversely impact our financial condition and results of operations, and that are in addition to risks associated with regulated cannabis cultivation and processing facilities, including but not limited to:

- the impact of the continued evolution of the retail distribution model for cannabis and customer preferences, including the impact of e-commerce and home delivery on demand for cannabis retail space;
- negative perceptions by customers of the safety, convenience and attractiveness of cannabis dispensaries;
- the handling of significant cash transactions and cannabis inventory at the property, which may increase security risks associated with dispensary operations;
- local real estate conditions (such as an oversupply of, or a reduction in demand for, cannabis retail space);
- our and our tenants' ability to procure and maintain appropriate levels of property and casualty insurance; and
- risks associated with data breaches through cyberattacks, cyber intrusions or otherwise that expose customer personal information at dispensaries, which may result in liability and reputational damage to our tenants and our company.

The realization of any of the risks above, among others, with respect to one or more of our properties or tenants could have a material adverse impact on our business.

We are exposed to the potential impacts of future climate change, which may result in unanticipated losses that could affect our business and financial condition.

We are exposed to potential physical risks from possible future changes in climate. Our properties may be exposed to catastrophic weather events, such as severe storms, hurricanes, fires, floods or droughts, in addition to changes in temperature and air quality. If the frequency of extreme weather events increases, our exposure to these events could increase. We may also be exposed to regulatory risks related to climate change, including regulations seeking to limit greenhouse gas emissions and reduce water usage. We may also be adversely impacted by potential impacts to the supply chain or stricter energy efficiency standards or greenhouse gas regulations for commercial real estate. We cannot give any assurance that other such conditions do not exist or may not arise in the future. The potential impacts of future climate change on our properties could adversely affect our ability to lease or sell such properties or to borrow using such properties as collateral.

Liability for uninsured losses could adversely affect our financial condition.

While the terms of our leases with our tenants generally require property and casualty insurance, losses from disaster-type occurrences, such as earthquakes, hurricanes, floods and weather-related disasters, and other types of insurance, such as landlord's rental loss insurance, may be either uninsurable or not insurable on economically viable terms, due in part to our properties' locations, construction types and concentration on the regulated cannabis industry. Should an uninsured loss occur, we could lose our capital investment or anticipated profits and cash flows from one or more properties.

If our properties' access to adequate water and power supplies is interrupted, it could harm our ability to lease the properties for cannabis cultivation and production, thereby adversely affecting our ability to generate returns on our properties.

In order to lease the properties that we acquire, these properties require access to sufficient water and power to make them suitable for the cultivation and production of cannabis. Although we expect to acquire properties with sufficient access to water, should the need arise for additional wells from which to obtain water, we would be required to obtain permits prior to drilling such wells. Permits for drilling water wells are required by state and county regulations, and such permits may be difficult to obtain due to the limited supply of water in areas where we acquire properties. Similarly, our properties may be subject to governmental regulations relating to the quality and disposition of rainwater runoff or other water to be used for irrigation. In such case, we could incur costs necessary in order to retain this water. If we are unable to obtain or maintain sufficient water supply for our properties, our ability to lease them for the cultivation and production of cannabis would be seriously impaired, which would have a material adverse impact on the value of our assets and our results of operations.

Historically, states that have legalized cannabis cultivation have typically required that such cultivation take place indoors. Indoor cultivation of cannabis requires significant power for growing lights and ventilation and air conditioning to remove the hot air generated by the growing lights. While outdoor cultivation is gaining acceptance in many states with favorable climates for such growth, we expect that most of our properties will continue to utilize indoor cultivation methods. Any extended interruption of the power supply to our properties, particularly those using indoor cultivation methods, would likely harm our tenants' crops and processing capabilities, which could result in their inability to make lease payments to us for our properties. Any lease payment defaults by a tenant could adversely affect our cash flows and cause us to reduce the amount of distributions to stockholders.

Due to our involvement in the regulated cannabis industry, we may have a difficult time obtaining the various insurance policies that are desired to operate our business, which may expose us to additional risks and financial liabilities.

Insurance that is otherwise readily available, such as workers' compensation, general liability and directors' and officers' insurance, is more difficult for us to find and more expensive, because we lease our properties to companies in the regulated cannabis industry. There are no guarantees that we will be able to find such insurance in the future, or that the cost will be affordable to us. If we are forced to go without such insurance or with less insurance than we would prefer, it may prevent us from entering into certain business sectors, may inhibit our growth, and may expose us to additional risk and financial liabilities.

Construction loans involve an increased risk of loss and other risks that are different from owning and leasing properties.

In June 2021, we executed a construction loan agreement with a developer, pursuant to which we agreed to make available up to \$18.5 million for the development of a regulated cannabis cultivation and processing facility in California. In January 2023, we amended our construction loan agreement to provide up to an additional \$4.5 million for the development as a result of costs incurred by the developer that were in excess of the original budget, making our total potential investment in the project \$23.0 million. We may invest in other such loans in the future. Construction loans involve an increased risk of loss and other risks that are different from owning and leasing properties, including the following risks:

- If we fail to fund our entire commitment on a construction loan or if a borrower otherwise fails to complete the construction of a project, there could be adverse consequences associated with the loan, including, but not limited to: a loss of the value of the property securing the loan, especially if the borrower is unable to raise funds to complete it from other sources; a borrower's claim against us for failure to perform under the loan documents; increased costs to the borrower that the borrower is unable to pay; a bankruptcy or receivership filing by the borrower; and abandonment by the borrower of the collateral for the loan;

[Table of Contents](#)

- We are subject to the risk that a borrower may make business decisions with which we disagree and the management of such company may take risks or otherwise act in ways that do not serve our interests;
- A borrower may not be able to realize the value anticipated from the project and otherwise not have the resources to repay the amount owed under the construction loan at maturity;
- We may incur significant costs and assume significant liabilities in foreclosing on any property subject to a construction loan, in addition to costs and risks associated with completing construction of the property if construction was not completed; and
- If we foreclose on the property and take ownership, we may incur a significant loss on disposing of the property or, in the alternative, we may not be able to lease the property at all or on terms reasonably acceptable to us if we determine to continue to own the property.

If any one of these risks were to materialize with respect to one or more construction loans, our financial condition, results of operations, cash flow, and our ability to make distributions to our stockholders could be materially and adversely affected.

We may purchase properties subject to ground leases or enter into other transactions involving ground leases that expose us to the loss of such properties upon breach or termination of the ground leases.

A ground lease agreement permits a tenant to develop and/or operate a land parcel (property) during the lease period, after which the land parcel and all improvements revert back to the property owner. Under a ground lease, property improvements are owned by the property owner unless an exception is created and all relevant taxes incurred during the lease period are paid for by the tenant. Ground leases typically have a long duration generally ranging from 50 to 99 years with additional extension options. As a lessee under a ground lease, we would be exposed to the possibility of losing the property upon termination, or an earlier breach by us, of the ground lease, which could have a material adverse effect on our business, financial condition and results of operations, our ability to make distributions to our stockholders and the trading price of our common stock.

Risks Related to Regulation

Cannabis remains illegal under federal law, and therefore, strict enforcement of federal laws regarding cannabis would likely result in our inability and the inability of our tenants to execute our respective business plans.

Cannabis is a Schedule I controlled substance under the CSA. Even in those jurisdictions in which cannabis has been legalized at the state level, the possession, distribution, cultivation, manufacture and use of cannabis all remain violations of federal law that are punishable by imprisonment, substantial fines and forfeiture. Moreover, individuals and entities may violate federal law if they intentionally aid and abet another in violating these federal controlled substance laws, or conspire with another to violate them. The U.S. Supreme Court has ruled in *United States v. Oakland Cannabis Buyers' Coop.* and *Gonzales v. Raich* that it is the federal government that has the right to regulate and criminalize the sale, possession and use of cannabis, even for medical purposes. We would likely be unable to execute our business plan if the federal government were to strictly enforce federal law regarding cannabis.

In January 2018, the DOJ rescinded certain memoranda, including the so-called "Cole Memo" issued on August 29, 2013 under the Obama Administration, which had characterized enforcement of federal cannabis prohibitions under the CSA to prosecute those complying with state regulatory systems allowing the use, manufacture and distribution of medical cannabis as an inefficient use of federal investigative and prosecutorial resources when state regulatory and enforcement efforts are effective with respect to enumerated federal enforcement priorities under the CSA. In rescinding the Cole Memo, DOJ instructed its prosecutors to enforce the laws enacted by Congress and to follow well-established principles that govern all federal prosecutions when deciding whether to pursue prosecutions related to cannabis activities. As a result, federal prosecutors could, and still can, use their prosecutorial discretion to decide to prosecute actors compliant with their state laws. Although there have not been any identified prosecutions of state law compliant

[Table of Contents](#)

cannabis entities, there can be no assurance that the federal government will not enforce federal laws against the regulated cannabis industry generally, including our tenants and us.

Attorney General Merrick Garland, who was confirmed as U.S. Attorney General on March 10, 2021, has not provided a clear policy directive for the United States as it pertains to state-legal cannabis-related activities, and there can be no assurance that DOJ or other law enforcement authorities will not seek to vigorously enforce existing laws.

Congress previously enacted an omnibus spending bill that includes the Rohrabacher-Blumenauer Amendment prohibiting the DOJ (which includes the DEA) from using funds appropriated by that bill to prevent states from implementing their medical-use cannabis laws. This provision will expire on September 30, 2023. There can be no assurance that Congress will approve inclusion of a similar prohibition in future appropriations bills to prevent DOJ from using congressionally appropriated funds to enforce federal cannabis laws against regulated medical cannabis actors operating in compliance with state and local law. In *USA vs. McIntosh*, the U.S. Court of Appeals for the Ninth Circuit held that this provision prohibits the DOJ from spending funds from relevant appropriations acts to prosecute individuals who engage in conduct permitted by state medical-use cannabis laws and who strictly comply with such laws. However, the Ninth Circuit's opinion, which only applies to the states of Alaska, Arizona, California, Hawaii, and Idaho, also held that persons who do not strictly comply with all state laws and regulations regarding the distribution, possession and cultivation of medical-use cannabis have engaged in conduct that is unauthorized, and in such instances the DOJ may prosecute those individuals. Furthermore, while we target the acquisition of medical-use cannabis facilities, our leases do not prohibit cannabis cultivation for adult-use that is permissible under the state and local laws where our facilities are located, such as in Arizona, California, Colorado, Illinois, Massachusetts, Michigan, Nevada, New Jersey, New York, Virginia and Washington. Consequently, certain of our tenants currently (and additional tenants may in the future) cultivate adult-use cannabis in our medical-use cannabis facilities, as permitted by such state and local laws now or in the future, which may in turn subject the tenant, us and our properties to greater and/or different federal legal and other risks as compared to facilities where cannabis is cultivated exclusively for medical use, including not providing protection under the Congressional spending bill provision described above.

Additionally, financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, unlicensed money transmitter statutes and the Bank Secrecy Act. The penalties for violation of these laws include imprisonment, substantial fines and forfeiture. Prior to the DOJ's rescission of the Cole Memo, supplemental guidance from the DOJ issued under the Obama administration directed federal prosecutors to consider the federal enforcement priorities enumerated in the Cole Memo when determining whether to charge institutions or individuals with any of the financial crimes described above based upon cannabis-related activity. This supplemental guidance was followed by the February 14, 2014 FinCEN Memorandum outlining the pathways for financial institutions to bank state-sanctioned cannabis businesses in compliance with federal enforcement priorities. Under these guidelines, financial institutions must submit a SAR in connection with all cannabis-related banking activities by any client of such financial institution, in accordance with federal money laundering laws. These cannabis-related SARs are divided into three categories - cannabis limited, cannabis priority, and cannabis terminated - based on the financial institution's belief that the business in question follows state law, is operating outside of compliance with state law, or where the banking relationship has been terminated, respectively. The FinCEN Memorandum states that in some circumstances, it is permissible for banks to provide services to cannabis-related businesses without risking prosecution for violation of federal money laundering laws. Although the Cole Memo has been rescinded, the FinCEN Memorandum technically remains intact; however, it is unclear whether the current administration will continue to follow the FinCEN Memorandum. The DOJ continues to have the right and power to prosecute crimes committed by banks and financial institutions, such as money laundering and violations of the Bank Secrecy Act, that occur in any state including states that have in some form legalized the sale of cannabis. Further, the conduct of the DOJ's enforcement priorities could change for any number of reasons. A change in the DOJ's priorities could result in the DOJ's prosecuting banks and financial institutions for crimes that were not previously prosecuted.

Federal prosecutors have significant discretion and no assurance can be given that the federal prosecutor in each judicial district where we purchase a property will not choose to strictly enforce the federal laws governing cannabis operations. Any change in the federal government's enforcement posture with respect to state-licensed cannabis operations, including the enforcement postures of individual federal prosecutors in judicial districts where we purchase properties, would result in our inability to execute our business plan, and we would likely suffer significant losses with

respect to our investment in cannabis facilities in the United States, which would adversely affect the trading price of our securities. Furthermore, following any such change in the federal government's enforcement position, we could be subject to criminal prosecution, which could lead to imprisonment and/or the imposition of penalties, fines, or forfeiture.

Certain of our tenants engage in operations for the adult-use cannabis industry in addition to or in lieu of operations for the medical-use cannabis industry, and such tenants, we and our properties may be subject to additional risks associated with such adult-use cannabis operations.

Our existing leases at our properties do not, and we expect that leases that we enter into with future tenants at other properties we acquire will not, prohibit cannabis operations for adult-use that is permissible under state and local laws where our facilities are located and certain of our tenants are currently engaged in operations for the adult-use cannabis industry, which may subject our tenants, us and our properties to different and greater risks, including greater prosecution risk for aiding and abetting violation of the CSA and federal laws governing money laundering. For example, the prohibition in the current omnibus spending bill that prohibits the DOJ from using funds appropriated by Congress to prevent states from implementing their medical-use cannabis laws does not extend to adult-use cannabis laws. In addition, while we may purchase properties in states that only permit medical-use cannabis at the time of acquisition, such states may in the future authorize by state legislation or popular vote the legalization of adult-use cannabis, thus permitting our tenants to engage in adult-use cannabis operations at our properties. For example, Arizona, California, Colorado, Illinois, Massachusetts, Michigan, Nevada, New Jersey, New York, Virginia and Washington permit licensed adult-use cannabis operations, and our leases with tenants in those states allow for adult-use cannabis operations to be conducted at the properties in compliance with state and local laws.

Our ability to grow our business depends on state laws pertaining to the cannabis industry.

Continued development of the cannabis industry depends upon continued legislative authorization of cannabis at the state level. The status quo of, or progress in, the regulated cannabis industry is not assured and any number of factors could slow or halt further progress in this area. While there may be ample public support for legislative action permitting the cannabis operations, numerous factors impact the legislative process. For example, many states that voted to legalize medical and/or adult-use cannabis have seen significant delays in the drafting and implementation of industry regulations and issuance of licenses. In addition, burdensome regulation at the state level could slow or stop further development of the cannabis industry, such as limiting the medical conditions for which medical cannabis can be recommended by physicians for treatment, not strictly enforcing regulations for non-licensed cannabis operators, restricting the form in which medical cannabis can be consumed, imposing significant registration requirements on physicians and patients or imposing significant taxes on the growth, processing and/or retail sales of cannabis, which could have the impact of dampening growth of the cannabis industry and making it difficult for cannabis businesses, including our tenants, to operate profitably in those states. Any one of these factors could slow or halt additional legislative authorization of cannabis, which could harm our business prospects.

For example, we believe that California's taxation of regulated cannabis at local and state governmental levels and ineffective enforcement policy with respect to illicit cannabis sales have significantly limited the growth and profitability of operators in that state. 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.

Recently, many states have also experienced significant declines in unit pricing for regulated cannabis products, with that decline more pronounced in certain states than in others. For example, according to New Leaf Data Services, spot wholesale cannabis flower prices in California and Michigan have each declined more than 30% during 2022. 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.

New laws that are adverse to the business of our tenants may be enacted, and current favorable national, state or local laws or enforcement guidelines relating to cannabis operations may be modified or eliminated in the future.

We have acquired and are targeting for acquisition properties that are owned by state-licensed cannabis operators. Relevant state or local laws may be amended or repealed, or new laws may be enacted in the future to eliminate existing laws permitting cannabis operations. If our tenants were forced to close their operations, we would need to replace those tenants with tenants who are not engaged in the cannabis industry, who most likely pay significantly lower rents. Moreover, any changes in state or local laws that reduce or eliminate the ability to conduct cannabis operations would likely result in a high vacancy rate for the kinds of properties that we seek to acquire, which would depress our lease rates and property values. In addition, we would realize an economic loss on any and all improvements made to properties that were specific to the cannabis industry.

For example, in connection with the Centers for Disease Control and Prevention identifying cases of vaping-related lung injuries, certain state and local governments had instituted temporary bans. In addition to litigation and reputational risks surrounding vaping-related lung injuries, bans or heightened regulations could have a material adverse impact on our tenants' operations in those states and localities where such a ban or other restrictive regulation has been implemented.

FDA regulation of cannabis and the possible registration of facilities where cannabis is grown could negatively affect the cannabis industry, which would directly affect our financial condition.

Should the federal government legalize cannabis, it is possible that the FDA would seek to regulate it under the Food, Drug and Cosmetics Act of 1938 or under the Public Health Service Act. Additionally, the FDA may issue rules, regulations, or guidance including certified good manufacturing practices, related to the growth, cultivation, harvesting and processing of medical cannabis. If regulated by the FDA as a drug, clinical trials may be needed to verify efficacy and safety. It is also possible that the FDA would require that facilities where cannabis is grown register with the FDA and comply with certain federally prescribed regulations. In the event that some or all of these regulations or enforcement actions are imposed, we do not know what the impact this would have on the cannabis industry, including what costs, requirements and possible prohibitions may be enforced. If we or our tenants are unable to comply with the regulations or registration as prescribed by the FDA, we and or our tenants may be unable to continue to operate their and our business in its current form or at all.

We and our tenants may have difficulty accessing the service of banks and other financial institutions, which may make it difficult to contract for real estate needs.

Financial transactions involving proceeds generated by cannabis-related conduct can form the basis for prosecution under the federal money laundering statutes, unlicensed money transmitter statute and the Bank Secrecy Act. Previous guidance issued by FinCEN clarified how financial institutions can provide services to cannabis-related businesses consistent with their obligations under the Bank Secrecy Act. However, this guidance does not provide any safe harbors or legal defenses from examination or regulatory or criminal enforcement actions by the DOJ, FinCEN or other federal regulators. Thus, most banks and other financial institutions in the United States do not appear to be comfortable providing banking services to cannabis-related businesses, or relying on this guidance, which can be amended or revoked at any time by the executive branch. In addition to the foregoing, banks may refuse to process debit card payments and credit card companies generally refuse to process credit card payments for cannabis-related businesses. Prior to the DOJ's announcement in January 2018 of the rescission of the Cole Memo and related memoranda, supplemental guidance from the DOJ directed federal prosecutors to consider the federal enforcement priorities enumerated in the Cole Memo when determining whether to charge institutions or individuals with any of the financial crimes described above based upon cannabis-related activity. It remains unclear what impact the rescission of the Cole Memo will have, but federal prosecutors may increase enforcement activities against institutions or individuals that are conducting financial transactions related to cannabis activities. The increased uncertainty surrounding financial transactions related to cannabis activities may also result in financial institutions discontinuing services to the cannabis industry.

Consequently, those businesses involved in the regulated cannabis industry continue to encounter difficulty establishing banking relationships, which may increase over time. Our inability to maintain our current bank accounts would make it difficult for us to operate our business, increase our operating costs, and pose additional operational, logistical and security challenges and could result in our inability to implement our business plan.

The terms of our leases require that our tenants make rental payments via check or wire transfer. Only a small percentage of financial institutions in the United States currently provide banking services to licensed cannabis operators. The inability of our current and potential tenants to open accounts and continue using the services of banks will limit their ability to enter into triple-net lease arrangements with us or may result in their default under our lease agreements, either of which could materially harm our business and the trading price of our securities.

In addition, for our tenants that are publicly traded companies, securities clearing firms may refuse to accept deposits of securities of those tenants, which may negatively impact the trading and valuations of such tenants and have a material adverse impact on our tenants' ability to finance their operations and growth through the capital markets.

In addition, federal money laundering statutes and Bank Secrecy Act regulations discourage financial institutions from working with any organization that sells a controlled substance, regardless of whether the state it resides in permits cannabis sales. While the United States House of Representatives has passed the SAFE Banking Act, which would permit commercial banks to offer services to cannabis companies that are in compliance with state law, it remains under consideration by the Senate, and if Congress fails to pass the SAFE Banking Act, the Company's inability, or limitations on the Company's ability, to open or maintain bank accounts, obtain other banking services and/or accept credit card and debit card payments may make it difficult for the Company to operate and conduct its business as planned or to operate efficiently.

Owners of properties located in close proximity to our properties may assert claims against us regarding the use of the property as a regulated cannabis cultivation, processing or dispensing facility, which if successful, could materially and adversely affect our business.

Owners of properties located in close proximity to our properties may assert claims against us regarding the use of our properties for regulated cannabis cultivation, processing or dispensing, including assertions that the use of the property constitutes a nuisance that diminishes the market value of such owner's nearby property. Such property owners may also attempt to assert such a claim in federal court as a civil matter under the Racketeer Influenced and Corrupt Organizations Act. If a property owner were to assert such a claim against us, we may be required to devote significant resources and costs to defending ourselves against such a claim, and if a property owner were to be successful on such a claim, our tenants may be unable to continue to operate their business in its current form at the property, which could materially adversely impact the tenant's business and the value of our property, our business and financial results and the trading price of our securities.

Laws and regulations affecting the regulated cannabis industry are constantly changing, which could materially adversely affect our operations, and we cannot predict the impact that future regulations may have on us.

Local, state and federal cannabis laws and regulations are broad in scope and subject to evolving interpretations, which could require us to incur substantial costs associated with compliance or alter our business plan. In addition, violations of these laws, or allegations of such violations, could disrupt our business and result in a material adverse effect on our operations. It is also possible that regulations may be enacted in the future that will be directly applicable to our business. We cannot predict the nature of any future laws, regulations, interpretations or applications, nor can we determine what effect additional governmental regulations or administrative policies and procedures, when and if promulgated, could have on our business.

Assets leased to cannabis businesses may be forfeited to the federal government.

Any assets used in conjunction with the violation of federal law are potentially subject to federal forfeiture, even in states where cannabis is legal. In July 2017, the DOJ issued a new policy directive regarding asset forfeiture, referred to as the "equitable sharing program." Under this new policy directive, federal authorities may adopt state and local

forfeiture cases and prosecute them at the federal level, allowing for state and local agencies to keep up to 80% of any forfeiture revenue. This policy directive represents a reversal of the DOJ's policy under the Obama administration, and allows for forfeitures to proceed that are not in accord with the limitations imposed by state-specific forfeiture laws. This new policy directive may lead to increased use of asset forfeitures by local, state and federal enforcement agencies. If the federal government decides to initiate forfeiture proceedings against cannabis businesses, such as the cannabis facilities that we have acquired and intend to acquire, our investment in those properties may be lost.

We may have difficulty accessing bankruptcy courts.

As discussed above, cannabis is illegal under federal law. Therefore, there is a compelling argument that the federal bankruptcy courts cannot provide relief for parties who engage in the cannabis or cannabis related businesses. Recent bankruptcy rulings have denied bankruptcies for dispensaries upon the justification that businesses cannot violate federal law and then claim the benefits of federal bankruptcy for the same activity and upon the justification that courts cannot ask a bankruptcy trustee to take possession of, and distribute cannabis assets as such action would violate the CSA. Therefore, we may not be able to seek the protection of the bankruptcy courts and this could materially affect our business or our ability to obtain credit.

The properties that we acquire are subject to extensive regulations, which may result in significant costs and materially and adversely affect our business, financial condition, liquidity and results of operations.

Our properties are and other properties that we expect to acquire will be subject to various laws and regulatory requirements. For example, local property regulations, including restrictive covenants of record, may restrict the use of properties we acquire and may require us to obtain approval from local authorities with respect to the properties that we expect to acquire, including prior to acquiring a property or when developing or undertaking renovations. Among other things, these restrictions may relate to cultivation, processing or dispensing of cannabis, the use of water and the discharge of waste water, fire and safety, seismic conditions, asbestos-cleanup or hazardous material abatement requirements. Our failure to obtain such regulatory approvals could have a material adverse effect on our business, financial condition, liquidity and results of operations. Furthermore, we cannot assure you that the regulatory requirements and statutory prohibitions relating to properties used in cannabis operations will not materially and adversely affect us or the timing or cost of any future acquisitions, developments or renovations, or that additional regulations will not be adopted that would increase such delays or result in additional prohibition or costs.

Compliance with environmental laws could materially increase our operating expenses.

There may be environmental conditions associated with properties we acquire of which we are unaware. If environmental contamination exists on properties we acquire, we could become subject to liability for the contamination. The presence of hazardous substances on a property may materially and adversely affect our ability to sell the property and we may incur substantial remediation costs. In addition, although we may require in our leases that tenants operate in compliance with all applicable laws and indemnify us against any environmental liabilities arising from a tenant's activities on the property, we could nonetheless be subject to liability by virtue of our ownership interest and we cannot be sure that our tenants would satisfy their indemnification obligations to us. Such environmental liability exposure associated with properties we acquire could harm our business, financial condition, liquidity and results of operations.

Risks Related to Financing Our Business

Our growth depends on external sources of capital, which may not be available on favorable terms or at all. In addition, banks, financial institutions, and other capital market participants may be reluctant to enter into lending and other financing transactions with us because we acquire properties used in the cultivation and production of cannabis. If one or more of these sources of funding is unavailable to us, it could have a material adverse effect on our business, financial condition, liquidity and results of operations.

We expect to acquire additional real estate assets, which we intend to finance primarily through newly issued equity or debt. We may not be in a position to take advantage of attractive investment opportunities for growth if we are unable, due to global or regional economic uncertainty, changes in the state or federal regulatory environment relating to the

cannabis industry, restrictions that potential investors may have to own our equity or debt due to our tenant's operations in the regulated cannabis industry, changes in market conditions for the regulated cannabis industry, our own operating or financial performance or otherwise, to access capital markets on a timely basis and on favorable terms or at all. In addition, U.S. federal income tax law generally requires that a REIT distribute annually at least 90% of its REIT taxable income, without regard to the deduction for dividends paid and excluding net capital gain and that it pay U.S. federal income tax at regular corporate rates to the extent that it annually distributes less than 100% of its taxable income. Because we intend to grow our business, this limitation may require us to raise additional equity or incur debt at a time when it may be disadvantageous to do so.

Our access to capital will depend upon a number of factors over which we have little or no control, including general market conditions, restrictions imposed on potential investors and other capital markets participants due to our tenants' operations in the regulated cannabis industry, and the market's perception of our current and potential future earnings. If general economic instability or downturn leads to an inability to borrow at attractive rates or at all, our ability to obtain capital to finance the purchase of real estate assets could be negatively impacted. In addition, banks and other financial institutions may be reluctant to enter into lending transactions with us, particularly secured lending, because we intend to acquire properties used in the cultivation, production or dispensing of cannabis. If this source of funding is unavailable to us, our growth may be limited and our levered return on the properties we purchase may be lower.

If we are unable to obtain capital on terms and conditions that we find acceptable, we likely will have to reduce the number of properties we can purchase. In addition, our ability to refinance all or any debt we may incur in the future, on acceptable terms or at all, is subject to all of the above factors, and will also be affected by our future financial position, results of operations and cash flows, which additional factors are also subject to significant uncertainties, and therefore we may be unable to refinance any debt we may incur in the future, as it matures, on acceptable terms or at all. All of these events would have a material adverse effect on our business, financial condition, liquidity and results of operations.

In addition, securities clearing firms may refuse to accept deposits of our securities, which may negatively impact the trading of our securities and have a material adverse impact on our ability to obtain capital.

In recent months, general financial conditions have deteriorated significantly, which has also significantly reduced our access to capital. If sustained, this would 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 draws for future improvements at existing properties.

Our Notes due 2026, Exchangeable Senior Notes and any future indebtedness reduce our cash available for distribution and may expose us to the risk of default.

As of February 28, 2023, we had outstanding \$300.0 million aggregate principal amount of our Notes due 2026 and approximately \$6.4 million aggregate principal amount of Exchangeable Senior Notes. Payments of principal and interest on our Notes due 2026 and Exchangeable Senior Notes and borrowings that we may incur in the future may leave us with insufficient cash resources to operate our properties or to pay the distributions currently contemplated or necessary to satisfy the requirements for REIT qualification. Our level of debt and the limitations imposed on us by these debt agreements could have significant material and adverse consequences, including the following:

- our cash flow may be insufficient to meet our required principal and interest payments;
- we may be unable to borrow additional funds as needed or on favorable terms, or at all;
- we may be unable to refinance our indebtedness at maturity or the refinancing terms may be less favorable than the terms of our original indebtedness;
- to the extent we borrow debt that bears interest at variable rates, increases in interest rates could materially increase our interest expense;

[Table of Contents](#)

- we may be forced to dispose of one or more of the properties that we expect to acquire, possibly on disadvantageous terms;
- we may default on our obligations or violate restrictive covenants, in which case the lenders may accelerate these debt obligations; and
- our default under any loan with cross default provisions could result in a default on other indebtedness.

If any one of these events were to occur, our financial condition, results of operations, cash flow, and our ability to make distributions to our stockholders could be materially and adversely affected.

A downgrade in our investment grade credit rating could materially adversely affect our business and financial condition.

There can be no assurance that we will be able to maintain our current credit rating. Any downgrade in terms of rating or outlook by the rating agency could have a material adverse impact on our cost and availability of capital, which could in turn have a material adverse impact on our financial condition, results of operations and liquidity and a material adverse effect on the market price of our common stock.

The terms governing our Notes due 2026 include restrictive covenants relating to our operations, which could limit our ability to respond to changing market conditions and our ability to make distributions to our stockholders.

The indenture governing the Notes due 2026 contains financial and operating covenants that, among other things, restrict our ability to take specific actions, even if we believe them to be in our best interest, including restrictions on our ability to (1) consummate a merger, consolidation or sale of all or substantially all of our assets and (2) incur additional secured and unsecured indebtedness.

The covenants relating to our Notes due 2026 may adversely affect our flexibility and our ability to achieve our operating plans. The indenture governing the Exchangeable Senior Notes also contains certain covenants. Our ability to comply with these covenants and other provisions relating to our indentures governing the Notes due 2026 and the Exchangeable Senior Notes may be affected by changes in our operating and financial performance, changes in general business and economic conditions, adverse regulatory developments or other events adversely impacting us. The breach of any of these covenants could result in a default under our indebtedness, which could cause those and other obligations to become due and payable. If any of our indebtedness is accelerated, we may not be able to repay it, pursue our business plan or make distributions to our stockholders.

Risks Related to Our Organization and Structure

Our senior management team manages our portfolio subject to very broad investment guidelines.

Our senior management team has broad discretion over our investments, and our stockholders will have no opportunity to evaluate the terms of transactions or other economic or financial data concerning our investments that are not described in periodic filings with the SEC. We rely on the senior management team's ability to execute acquisitions and dispositions of cannabis facilities, subject to the oversight and approval of our board of directors. Our senior management team is authorized to pursue acquisitions and dispositions of real estate investments in accordance with very broad investment guidelines, subject to approval of our board of directors.

Our board of directors may change our investment objectives and strategies without stockholder consent.

Our board of directors determines our major policies, including with regard to financing, growth, debt capitalization, REIT qualification and distributions. Our board of directors may amend or revise these and other policies without a vote of the stockholders. Under our charter and Maryland General Corporation Law (the "MGCL"), our stockholders generally have a right to vote only on the following matters:

[Table of Contents](#)

- the election or removal of directors;
- the amendment of our charter, except that our board of directors may amend our charter without stockholder approval to:
 - change our name;
 - change the name or other designation or the par value of any class or series of stock and the aggregate par value of our stock;
 - increase or decrease the aggregate number of shares of stock that we have the authority to issue;
 - increase or decrease the number of our shares of any class or series of stock that we have the authority to issue; and
 - effect certain reverse stock splits;
- our liquidation and dissolution; and
- our being a party to a merger, consolidation, sale or other disposition of all or substantially all of our assets or statutory share exchange.

All other matters are subject to the discretion of our board of directors.

Certain provisions of Maryland law could inhibit changes in control.

Under the MGCL, “business combinations” (including a merger, consolidation, statutory share exchange or, in certain circumstances, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and an “interested stockholder” or an affiliate of an interested stockholder are prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. An interested stockholder is defined as: (a) any person who beneficially owns 10% or more of the voting power of the then-outstanding voting stock of the corporation; or (b) an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then-outstanding stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. A Maryland corporation’s board of directors may provide that its approval is subject to compliance with any terms and conditions determined by the board of directors prior to the time that the interested stockholder becomes an interested stockholder.

Thereafter, any such business combination must generally be recommended by the board of directors of such corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding voting stock of the corporation; and
- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation, other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected, or held by an affiliate or associate of the interested stockholder unless, among other conditions, the corporation’s common stockholders receive a minimum price (as defined in the MGCL) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares.

A Maryland corporation’s board of directors may provide that its approval is subject to compliance with any terms and conditions determined by it. These provisions of the MGCL do not apply, however, to business combinations that

are approved or exempted by a Maryland corporation's board of directors prior to the time that the interested stockholder becomes an interested stockholder.

The "control share" provisions of the MGCL provide that, subject to certain exceptions, a holder of "control shares" of a Maryland corporation (defined as shares which, if aggregated with all other shares of stock owned by the acquirer or in respect of which the acquirer is able to exercise or direct the exercise of voting power (except solely by virtue of a revocable proxy), entitle the stockholder to exercise one of three increasing ranges of voting power in electing directors) acquired in a "control share acquisition" (defined as the direct or indirect acquisition of ownership or control of issued and outstanding "control shares") has no voting rights with respect to such shares except to the extent approved by our stockholders by the affirmative vote of at least two-thirds of all the votes entitled to be cast on the matter, excluding votes entitled to be cast by the acquirer of control shares, our officers and our personnel who are also our directors. Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. Our bylaws contain a provision exempting from the control share acquisition statute any and all acquisitions by any person of shares of our stock. There can be no assurance that such provision will not be amended or eliminated at any time in the future by our board of directors.

The "unsolicited takeover" provisions of Title 3, Subtitle 8 of the MGCL, or Subtitle 8, permit our board of directors, without stockholder approval and regardless of what is currently provided in our charter or bylaws, to implement certain takeover defenses, some of which (for example, a classified board) we do not yet have. Our charter provides that vacancies on our board may be filled only by the remaining directors and for the remainder of the full term of the directorship in which the vacancy occurred. Through provisions in our charter and bylaws unrelated to Subtitle 8, we already (i) require the affirmative vote of stockholders entitled to cast not less than two-thirds of all of the votes entitled to be cast generally in the election of directors for the removal of any director from the board, only with cause, (ii) vest in the board of directors the exclusive power to fix the number of directorships and (iii) require, unless called by our chairman of the board, our chief executive officer or our board of directors, the written request of stockholders entitled to cast not less than a majority of all votes entitled to be cast at such a meeting to call a special meeting of our stockholders.

These provisions may have the effect of inhibiting a third party from making an acquisition proposal for us or of delaying, deferring or preventing a change in control of us under the circumstances that otherwise could provide the holders of shares of common stock with the opportunity to realize a premium over the then current market price.

Our authorized but unissued shares of common and preferred stock may prevent a change in our control.

Our charter permits our board of directors to authorize us to issue additional shares of our authorized but unissued common or preferred stock. In addition, our board of directors may, without stockholder approval, amend our charter to increase the aggregate number of our shares of stock or the number of shares of stock of any class or series that we have the authority to issue and classify or reclassify any unissued shares of common or preferred stock and set the terms of the classified or reclassified shares. As a result, our board of directors may establish a class or series of shares of common or preferred stock that could delay or prevent a transaction or a change in control that might involve a premium price for shares of our common stock or otherwise be in the best interest of our stockholders.

Severance agreements with our executive officers could be costly and prevent a change in our control.

The severance agreements that we entered into with our executive officers provide that, if their employment with us terminates under certain circumstances (including upon a change in our control), we may be required to pay them significant amounts of severance compensation, including accelerated vesting of equity awards, thereby making it costly to terminate their employment. Furthermore, these provisions could delay or prevent a transaction or a change in our control that might involve a premium paid for our common stock or otherwise be in the best interests of our stockholders.

Because of our holding company structure, we depend on our Operating Partnership and its subsidiaries for cash flow and we will be structurally subordinated in right of payment to the obligations of such operating subsidiary and its subsidiaries.

We are a holding company with no business operations of our own. Our only significant asset is and will be the general and limited partnership interests in our Operating Partnership. We conduct, and intend to continue to conduct, all of our business operations through our Operating Partnership. Accordingly, our only source of cash to pay our obligations is distributions from our Operating Partnership and its subsidiaries of their net earnings and cash flows. We cannot assure our stockholders that our Operating Partnership or its subsidiaries will be able to, or be permitted to, make distributions to us that will enable us to make distributions to our stockholders from cash flows from operations. Each of our Operating Partnership's subsidiaries is or will be a distinct legal entity and, under certain circumstances, legal and contractual restrictions may limit our ability to obtain cash from such entities. In addition, because we are a holding company, your claims as stockholders will be structurally subordinated to all existing and future liabilities and obligations of our Operating Partnership and its subsidiaries. Therefore, in the event of our bankruptcy, liquidation or reorganization, our assets and those of our Operating Partnership and its subsidiaries will be able to satisfy your claims as stockholders only after all of our and our Operating Partnership's and its subsidiaries' liabilities and obligations have been paid in full. Furthermore, U.S. bankruptcy courts have generally refused to grant bankruptcy protections to cannabis businesses.

Our Operating Partnership may issue additional limited partnership interests to third parties without the consent of our stockholders, which would reduce our ownership percentage in our Operating Partnership and would have a dilutive effect on the amount of distributions made to us by our Operating Partnership and, therefore, the amount of distributions we can make to our stockholders.

We are the sole general partner of our Operating Partnership and own, directly or through subsidiaries, 100% of the outstanding partnership interests in our Operating Partnership. We may, in connection with our acquisition of properties or otherwise, cause our Operating Partnership to issue additional limited partnership interests to third parties. Such issuances would reduce our ownership percentage in our Operating Partnership and affect the amount of distributions made to us by our Operating Partnership and, therefore, the amount of distributions we can make to our stockholders. Because our stockholders will not directly own any interest in our Operating Partnership, our stockholders will not have any voting rights with respect to any such issuances or other partnership level activities of our Operating Partnership.

If we issue limited partnership interests in our Operating Partnership in exchange for property, the value placed on such partnership interests may not accurately reflect their market value, which may dilute your interest in us.

If we issue limited partnership interests in our Operating Partnership in exchange for property, the per unit value attributable to such interests will be determined based on negotiations with the property seller and, therefore, may not reflect the fair market value of such limited partnership interests if a public market for such limited partnership interests existed. If the value of such limited partnership interests is greater than the value of the related property, your interest in us may be diluted.

Our rights and the rights of our stockholders to take action against our directors and officers are limited, which could limit your recourse in the event of actions not in your best interests.

We have entered into indemnification agreements with each of our executive directors and officers that provide for indemnification to the maximum extent permitted by Maryland law. Maryland law permits us to include in our charter a provision eliminating the liability of our directors and officers and our stockholders for money damages except for liability resulting from:

- actual receipt of an improper benefit or profit in money, property or services; or
- active and deliberate dishonesty that was established by a final judgment and was material to the cause of action.

Our charter authorizes us to obligate ourselves and our bylaws obligate us, to the fullest extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

- any present or former director or officer who is made or threatened to be made a party to or witness in the proceeding by reason of his or her service in that capacity; or
- any individual who, while a director or officer of our company and at our request, serves or has served as a director, officer, partner, manager, member or trustee of another corporation, REIT, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to or witness in the proceeding by reason of his or her service in that capacity.

Our charter contains provisions that make removal of our directors difficult, which could make it difficult for our stockholders to effect changes to our management.

Our charter provides that, subject to the rights of holders of any series of preferred stock, a director may be removed only with cause upon 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. Vacancies may be filled only by a vote of the majority of the remaining directors in office, even if less than a quorum. These requirements make it more difficult to change our management by removing and replacing directors and may prevent a change in control of our company that is in the best interests of our stockholders.

Ownership limitations may restrict change in control or business combination opportunities in which our stockholders might receive a premium for their shares.

In order for us to qualify as a REIT under the Code, shares of our stock must be owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of the outstanding shares of our stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made). In order for us to qualify as a REIT under 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 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, including our 9.00% Series A Cumulative Redeemable Preferred Stock (the “Series A Preferred Stock”). These ownership limits and other restrictions could have the effect of discouraging a takeover or other transaction in which holders of our common stock might receive a premium for their shares over the then prevailing market price or which holders might believe to be otherwise in their best interests.

We plan to continue to operate our business so that we are not required to register as an investment company under the Investment Company Act.

We engage primarily in the business of investing in real estate and we have not and do not intend to register as an investment company under the Investment Company Act. If our primary business were to change in a manner that would require us register as an investment company under the Investment Company Act, we would have to comply with substantial regulation under the Investment Company Act which could restrict the manner in which we operate and finance our business and could materially and adversely affect our business operations and results.

Risks Related to Our Securities

The market prices and trading volumes of our common stock and Series A Preferred Stock have been and may continue to be volatile.

The market prices for our common stock and Series A Preferred Stock have been, and may continue to be, volatile. In addition, the trading volume in our common stock and Series A Preferred Stock has fluctuated and may continue to fluctuate, resulting in significant price variations.

Some of the factors that could negatively affect the share price or result in fluctuations in the price or trading volume of our common stock and preferred stock include:

- our actual or projected operating results, financial condition, cash flows and liquidity or changes in business strategy or prospects;
- changes in government policies, regulations or laws;
- the performance of our current properties and additional properties that we acquire;
- our ability to make acquisitions on preferable terms or at all;
- equity issuances by us, including issuances by us of shares of common stock in connection with exchanges of our Exchangeable Senior Notes or under our ATM Program, or share resales by our stockholders, or the perception that such issuances or resales may occur;
- actual or anticipated accounting problems;
- publication of research reports about us, the real estate industry or the cannabis industry;
- changes in market valuations of similar companies;
- adverse market reaction to any increased indebtedness we may incur in the future;
- interest rate changes;
- additions to or departures of our senior management team;
- speculation in the press or investment community or negative press in general;
- our failure to meet, or the lowering of, our earnings estimates or those of any securities analysts;
- failure to maintain our qualification as a REIT;
- refusal of securities clearing firms to accept deposits of our securities;
- a delisting of our common stock or preferred stock from the New York Stock Exchange (“NYSE”);
- the realization of any of the other risk factors presented in this report;
- actions by institutional stockholders;
- price and volume fluctuations in the stock market generally; and

[Table of Contents](#)

- market and economic conditions generally, including the current state of the credit and capital markets and the market and economic conditions.

Market factors unrelated to our performance could also negatively impact the market price of our common stock and preferred stock. One of the factors that investors may consider in deciding whether to buy or sell our common stock or Series A Preferred Stock is our distribution rate as a percentage of our stock price relative to market interest rates. If market interest rates increase, prospective investors may demand a higher distribution rate or seek alternative investments paying higher dividends or interest. As a result, interest rate fluctuations and conditions in capital markets can affect the market value of our common stock or Series A Preferred Stock.

Common stock and preferred stock eligible for future sale may have material and adverse effects on our share price.

Subject to applicable law, our board of directors, without stockholder approval, may authorize us to issue additional shares of our common stock or to raise capital through the issuance of preferred stock (including equity or debt securities convertible into preferred stock), options, warrants and other rights, on terms and for consideration as our board of directors in its sole discretion may determine. Any such issuance could result in dilution of the equity of our stockholders. Sales of substantial amounts of shares of our common stock in the public market, or the perception that such sales might occur, could adversely affect the market price of our common stock.

Our charter also authorizes our board of directors, without stockholder approval, to designate and issue one or more classes or series of preferred stock (including equity or debt securities convertible into preferred stock) and to set or change the voting, conversion or other rights, preferences, restrictions, limitations as to dividends or other distributions and qualifications or terms or conditions of redemption of each class of shares so issued. If any preferred stock is publicly offered, the terms and conditions of such preferred stock (including any equity or debt securities convertible into preferred stock) will be set forth in a registration statement registering the issuance of such preferred stock or equity or debt securities convertible into preferred stock. Because our board of directors has the power to establish the preferences and rights of each class or series of preferred stock, it may afford the holders of any series or class of preferred stock preferences, powers, and rights senior to the rights of holders of common stock or other preferred stock. If we ever create and issue additional preferred stock or equity or debt securities convertible into preferred stock with a distribution preference over common stock or preferred stock, payment of any distribution preferences of new outstanding preferred stock would reduce the amount of funds available for the payment of distributions on the common stock and junior preferred stock. Further, holders of preferred stock are normally entitled to receive a preference payment if we liquidate, dissolve, or wind up before any payment is made to the common stockholders, likely reducing the amount common stockholders would otherwise receive upon such an occurrence. In addition, under certain circumstances, the issuance of additional preferred stock may delay, prevent, render more difficult or tend to discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of our securities, or the removal of incumbent management.

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

Additionally, from time to time we also may issue shares of our common stock or operating partnership units of our Operating Partnership in connection with property acquisitions. We may grant additional demand or piggyback registration rights in connection with these issuances. Sales of substantial amounts of our common stock or operating partnership units of our Operating Partnership, or the perception that these sales could occur, may adversely affect the prevailing market price of our common stock or may adversely affect the terms upon which we may be able to obtain additional capital through the sale of equity securities.

As of February 28, 2023, 28,002,799 shares of our common stock were issued and outstanding, and we had reserved an additional 724,297 shares of common stock for future issuance under our 2016 Omnibus Incentive Plan (the “2016 Plan”) and 103,625 shares potentially issuable upon exchange of our Exchangeable Senior Notes (based on the exchange rate as of February 28, 2023). In addition, as of February 28, 2023, we had \$500.0 million in shares of common stock available for future issuance under the ATM Program. The existence of operating partnership units, Exchangeable Senior

Notes, shares of Series A Preferred Stock, shares of our common stock reserved for issuance under our 2016 Plan and shares available for future issuance under the ATM Program may adversely affect the terms upon which we may be able to obtain additional capital through the sale of equity securities.

We cannot assure you of our ability to make distributions in the future. We may be unable to pay or maintain cash dividends, and may borrow money, sell assets or use offering proceeds to make distributions to our stockholders, if we are unable to make distributions from cash flows from operations.

U.S. federal income tax law generally requires that a REIT distribute annually at least 90% of its REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gain (which does not equal net income as calculated in accordance with U.S. generally accepted accounting principles (“GAAP”)), and that it pay U.S. federal income tax at regular corporate rates to the extent that it annually distributes less than 100% of its taxable income. We may not continue our current level of distributions to stockholders. Our board of directors will determine future distributions based on a number of factors, including cash available for distribution, economic conditions, operating results, our financial condition, especially in relation to our anticipated future capital needs, then current expansion plans, the distribution requirements for REITs, and other factors our board deems relevant. In addition, we may borrow money, sell assets or use offering proceeds to make distributions to our stockholders, if we are unable to make distributions from cash flows from operations.

Our charter permits us to pay distributions from any source and, as a result, the amount of distributions paid at any time may not reflect the performance of our properties or as cash flow from operations.

Our organizational documents permit us to make distributions from any source. To the extent that our cash available for distribution is insufficient to cover our distributions, we expect to use our cash on hand, the proceeds from the issuance of securities in the future, the proceeds from borrowings or other sources to pay distributions. It is possible that any distributions declared will be paid from our cash on hand or future issuances of shares of our common stock or preferred stock, which would constitute a return of capital to our stockholders. If we fund distributions from borrowings, sales of properties, future issuances of securities or cash on hand, we will have fewer funds available for the acquisition of additional properties resulting in potentially fewer investments, less diversification of our portfolio and a reduced overall return to our stockholders. In addition, the value of our shares of common stock and preferred stock may be diluted because funds that would otherwise be available to make investments would be diverted to fund distributions.

The market price of our common stock and Series A Preferred Stock could be materially and adversely affected by our level of cash distributions.

The market value of our common stock and Series A Preferred Stock is based primarily upon the market’s perception of our growth potential and our current and potential future cash distributions, whether from operations, sales or re-financings, and is secondarily based upon the real estate market value of our underlying assets. For that reason, our stock may trade at prices that are higher or lower than our net asset value per share. To the extent we retain operating cash flow for investment purposes, working capital reserves or other purposes, these retained funds, while increasing the value of our underlying assets, may not correspondingly increase the market price of our stock. Our failure to meet the market’s expectations with regard to future earnings and cash distributions likely would materially and adversely affect the market price of our common stock and Series A Preferred Stock.

Risks Related to Our Taxation as a REIT

Our failure to qualify or remain qualified as a REIT would subject us to U.S. federal income tax and applicable state and local taxes, which would reduce the amount of cash available for distribution to our stockholders and have significant adverse consequences on the market price of our common stock and existing preferred stock.

We have made an election to be taxed as a REIT under Sections 856 through 860 of the Code commencing with our taxable year ended December 31, 2017. We believe that we have been organized and operated in such a manner as to qualify for taxation as a REIT under the Code for such taxable year and all subsequent taxable years to date, and intend to continue to operate in such a manner in the future. We have not requested and do not intend to request a ruling from

the Internal Revenue Service (the “Service”) that we qualify as a REIT, and the statements in this report are not binding on the Service or any court. Qualification as a REIT involves the application of highly technical and complex Code provisions and regulations promulgated by the U.S. Treasury Department thereunder (“Treasury Regulations”) for which there are limited judicial and administrative interpretations. Accordingly, we cannot provide assurance that we will qualify or remain qualified as a REIT.

To qualify as a REIT, we must meet, on an ongoing basis, various tests regarding the nature and diversification of our assets and our income, the ownership of our outstanding stock, and the amount of our distributions to stockholders. Our ability to satisfy these asset tests depends upon the characterization and fair market values of our assets, some of which are not susceptible to a precise determination, and for which we will not obtain independent appraisals. Our compliance with the REIT income and quarterly asset requirements also depends upon our ability to manage successfully the composition of our income and assets on an ongoing basis. Moreover, new legislation, court decisions or administrative guidance, in each case possibly with retroactive effect, may make it more difficult or impossible for us to qualify as a REIT. Thus, while we intend to operate in a manner to qualify as a REIT, in view of the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations, and the possibility of future changes in our circumstances, we cannot provide assurance that we will so qualify for any particular year. These considerations also might restrict the types of income we can realize, or assets that we can acquire in the future.

If we fail to qualify as a REIT in any taxable year, and we do not qualify for certain statutory relief provisions, we would be required to pay U.S. federal income tax, including any applicable alternative minimum tax (for taxable years beginning before December 31, 2017), on our taxable income at regular corporate rates (and possibly increased state and local taxes. We will not be able to deduct distributions to our stockholders in any year in which we fail to qualify, nor will we be required to make distributions to our stockholders. In such a case, we might need to borrow money, sell assets, or reduce or even cease making distributions in order to pay our taxes. Our payment of income tax would reduce significantly the amount of cash available for distribution to our stockholders. If we fail to qualify as a REIT, all distributions to stockholders, to the extent of current and accumulated earnings and profits, will be taxable to the stockholders as dividend income (which may be subject to tax at preferential rates) and corporate distributions may be eligible for the dividends received deduction if they satisfy the relevant provisions of the Code. Furthermore, if we fail to qualify as a REIT, we no longer would be required to distribute substantially all of our net taxable income to our stockholders. In addition, unless we were eligible for certain statutory relief provisions, we could not re-elect to qualify as a REIT until the fifth calendar year following the year in which we failed to qualify. We might not be entitled to the statutory relief described in this paragraph in all circumstances.

The REIT distribution requirements could adversely affect our ability to execute our business plan, require us to borrow funds during unfavorable market conditions or subject us to tax, which would reduce the cash available for distribution to our stockholders.

To qualify as a REIT, we must distribute to our stockholders, on an annual basis, at least 90% of our REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gain. In addition, we will be subject to U.S. federal income tax at regular corporate rates to the extent that we distribute less than 100% of our net taxable income (including net capital gain) and will be subject to a 4% nondeductible excise tax on the amount by which our distributions in any calendar year are less than a minimum amount specified under U.S. federal income tax laws. We intend to distribute our net income to our stockholders in a manner intended to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax. However, we can provide no assurances that we will have sufficient cash or other liquid assets to meet these requirements. Difficulties in meeting the distribution requirements might arise due to competing demands for available funds or timing differences between tax reporting and cash receipts. In addition, if the Service were to disallow certain of our deductions, such as employee salaries, depreciation or interest expense, by alleging that we, through our rental agreements with our state-licensed medical cannabis tenants, are primarily or vicariously liable for “trafficking” a Schedule 1 substance (cannabis) under Section 280E of the Code or otherwise, we would be unable to meet the distribution requirements and would fail to qualify as a REIT. Likewise, if any governmental entity were to impose fines on us for our business involvement in state-licensed cannabis, such fines would not be deductible and the inability to deduct such fines could also cause us to be unable to satisfy the distribution requirement.

We may also generate less cash flow than taxable income in a particular year. In such event, we may be required to use cash reserves, incur debt or liquidate assets at rates or times that we regard as unfavorable or, to the extent possible, make a taxable distribution of our stock in order to satisfy the REIT 90% distribution requirement and to avoid U.S. federal income tax and the 4% nondeductible excise tax in that year. Under certain circumstances, we may be able to rectify a failure to meet the distribution requirement for a year by paying “deficiency dividends” to stockholders in a later year, which may be included in our deduction for dividends paid for the earlier year. Thus, we may be able to avoid being taxed on amounts distributed as deficiency dividends; however, we will be required to pay penalties and interest based upon the amount of any deduction taken for deficiency dividends. If we do not have sufficient cash to distribute, we may incur U.S. federal income tax, U.S. federal excise tax and/or our REIT status may be jeopardized.

If we are deemed to be subject to Section 280E of the Code because of the business activities of our tenants, the resulting disallowance of tax deductions could cause us to incur U.S. federal income tax and jeopardize our REIT status.

Section 280E of the Code provides that, with respect to any taxpayer, no deduction or credit is allowed for expenses incurred during a taxable year “in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of Schedule I and II of the CSA) which is prohibited by federal law or the law of any State in which such trade or business is conducted.” Because cannabis is a Schedule I controlled substance under the CSA, Section 280E by its terms applies to the purchase and sale of cannabis products. Although we will not be engaged in the purchase, sale, growth, cultivation, harvesting, or processing of cannabis products, we will lease our properties to tenants who will engage in such activities, and therefore our tenants will likely be subject to Section 280E. If the Service were to take the position that, through our rental agreements with our state-licensed cannabis tenants, we are primarily or vicariously liable under federal law for “trafficking” a Schedule I substance (cannabis) under section 280E of the Code or for any other violations of the CSA, the Service may seek to apply the provisions of Section 280E to our company and disallow certain tax deductions, including for employee salaries, depreciation or interest expense. If such tax deductions are disallowed, we would be unable to meet the distribution requirements applicable to REITs under the Code, which could cause us to incur U.S. federal income tax and fail to qualify as a REIT. Because we are not engaged in the purchase and/or sale of a controlled substance, we do not believe that we will be subject to the disallowance provisions of Section 280E, and neither we nor our tax advisors are aware of any tax court cases or guidance from the Service in which a taxpayer not engaged in the purchase or sale of a controlled substance was disallowed deductions under Section 280E. However, there is no assurance that the Service will not take such a position either currently or in the future.

Complying with REIT requirements may cause us to forego otherwise attractive business opportunities or liquidate otherwise attractive investments.

To qualify as a REIT, we must ensure that we meet the REIT gross income tests annually. In addition, we must ensure that, at the end of each calendar quarter, at least 75% of the value of our total assets consists of cash, cash items, government securities and qualified REIT real estate assets, including certain mortgage loans, certain kinds of mortgage-backed securities and certain securities issued by other REITs. The remainder of our investment in securities (other than government securities, securities of corporations that are treated as taxable REIT subsidiaries (“TRSS”), and qualified REIT real estate assets) generally cannot include more than 10% of the outstanding voting securities of any one issuer or more than 10% of the total value of the outstanding securities of any one issuer.

In addition, in general, no more than 5% of the value of our assets (other than government securities and qualified real estate assets) can consist of the securities of any one issuer, no more than 20% of the value of our total securities can be represented by securities of one or more TRSSs, and the aggregate value of debt instruments issued by public REITs held by us that are not otherwise secured by real property may not exceed 25% of the value of our total assets. If we fail to comply with these asset requirements at the end of any calendar quarter, we generally must correct the failure within 30 days after the end of the calendar quarter or qualify for certain statutory relief provisions to avoid losing our REIT qualification and suffering adverse tax consequences.

To meet these tests, we may be required to take or forego taking actions that we would otherwise consider advantageous. For instance, in order to satisfy the gross income or asset tests applicable to REITs under the Code, we

may be required to forego investments that we otherwise would make. Furthermore, we may be required to liquidate from our portfolio otherwise attractive investments. In addition, we may be required to make distributions to stockholders at disadvantageous times or when we do not have funds readily available for distribution. These actions could have the effect of reducing our income and amounts available for distribution to our stockholders. Thus, compliance with the REIT requirements may hinder our investment performance.

The tax on prohibited transactions could limit our ability to engage in certain transactions or subject us to a 100% penalty tax.

We are subject to a 100% tax on any income from a prohibited transaction. “Prohibited transactions” generally include sales or other dispositions of property (other than property treated as foreclosure property under the Code) that is held as inventory or primarily for sale to customers in the ordinary course of a trade or business by a REIT, either directly or indirectly through certain pass-through subsidiaries. Although we do not intend to hold a significant amount of assets as inventory or primarily for sale to customers in the ordinary course of our business, the characterization of an asset sale as a prohibited transaction depends on the particular facts and circumstances. The Code provides a safe harbor that, if met, allows a REIT to avoid being treated as engaged in a prohibited transaction. It is likely that we may sell certain properties that have not met all of the requirements of such safe harbor if we believe the transaction would not be a prohibited transaction based on a facts and circumstances analysis. If the Service were to successfully argue that such a sale was in fact a prohibited transaction, we would be subject to a 100% penalty tax with respect to such sale.

The ability of our board of directors to revoke our REIT election without stockholder approval may cause adverse consequences to our stockholders.

Our charter provides that the board of directors may revoke or otherwise terminate our REIT election, without the approval of our stockholders, if the board of directors determines that it is no longer in our best interest to attempt to, or continue to, qualify as a REIT. If we cease to qualify as a REIT, we would become subject to U.S. federal income tax on our net taxable income and we generally would no longer be required to distribute any of our net taxable income to our stockholders, which may have adverse consequences on our total return to our stockholders.

Dividends payable by REITs do not qualify for the reduced tax rates on dividend income from regular corporations, which could adversely affect the value of our common stock.

The maximum U.S. federal income tax rate for certain qualified dividends payable to U.S. stockholders that are individuals, trusts and estates is 20%. Dividends (other than capital gain dividends) payable by REITs, however, generally are not eligible for the reduced rates. Although the reduced U.S. federal income tax rate applicable to dividend income from regular corporate dividends does not adversely affect the taxation of REITs or dividends paid by REITs, the more favorable rates applicable to regular corporate dividends could cause investors who are individuals, trusts and estates to perceive investments in REITs to be relatively less attractive than investments in the stocks of non-REIT corporations that pay dividends, which could adversely affect the value of the shares of our common stock.

Non-corporate stockholders, including individuals, generally may deduct 20% of dividends from a REIT, other than capital gain dividends and dividends treated as qualified dividend income, for taxable years beginning after December 31, 2017 and before January 1, 2026. If we fail to qualify as a REIT, such stockholders may not claim this deduction with respect to dividends paid by us.

Complying with REIT requirements may limit our ability to hedge our liabilities effectively and may cause us to incur tax liabilities.

The REIT provisions of the Code may limit our ability to hedge our liabilities. Any income from a hedging transaction we enter into to manage risk of interest rate changes, price changes or currency fluctuations with respect to borrowings made or to be made to acquire or carry real estate assets, if properly identified under applicable Treasury Regulations, does not constitute “gross income” for purposes of the 75% or 95% gross income tests. To the extent that we enter into other types of hedging transactions, the income from those transactions will likely be treated as non-qualifying income for purposes of both of the gross income tests. As a result of these rules, we may need to limit our use of advantageous hedging techniques or implement those hedges through a TRS. This could increase the cost of our

hedging activities because our TRSs would be subject to tax on gains or expose us to greater risks associated with changes in interest rates than we would otherwise want to bear. In addition, losses in a TRS generally will not provide any tax benefit, except for being carried forward against future taxable income of such TRS, provided, however, losses in a TRS arising in taxable years beginning after December 31, 2017 may only be deducted against 80% of future taxable income in the TRS.

Re-characterization of sale-leaseback transactions may cause us to lose our REIT status.

We purchase many properties and lease them back to the sellers of such properties. While we will use our best efforts to structure any such sale-leaseback transaction so that the lease will be characterized as a “true lease,” thereby allowing us to be treated as the owner of the property for federal income tax purposes, the Service could challenge such characterization. In the event that any sale-leaseback transaction is challenged and re-characterized as a financing transaction or loan for federal income tax purposes, deductions for depreciation and cost recovery relating to such property would be disallowed. If a sale-leaseback transaction were so re-characterized, we might fail to satisfy the REIT qualification “asset tests” or the “income tests” and, consequently, lose our REIT status effective with the year of re-characterization. Alternatively, the amount of our REIT taxable income could be recalculated which might also cause us to fail to meet the distribution requirement for a taxable year.

Non-U.S. stockholders will generally be subject to withholding tax with respect to our ordinary dividends.

Non-U.S. stockholders generally will be subject to U.S. federal withholding tax on ordinary dividends received from us at a 30% rate, subject to reduction under an applicable treaty or a statutory exemption under the Code.

Legislative, regulatory or administrative changes could adversely affect us or our stockholders.

At any time, the U.S. federal income tax laws or Treasury Regulations governing REITs or the administrative interpretations of those laws or regulations may be changed, possibly with retroactive effect, and may adversely affect us and our stockholders. We cannot predict if or when any new U.S. federal income tax law, regulation or administrative interpretation, or any amendment to any existing U.S. federal income tax law, regulation or administrative interpretation, will be adopted, promulgated or become effective or whether any such law, regulation or interpretation may take effect retroactively.

It remains unclear what impact the rescission of the Cole Memo may have on our ability to qualify as a REIT. If rescission of the Cole Memo is followed by strict enforcement of federal prohibitions regarding cannabis, the Service could seek to apply the provisions of Section 280E of the Code to our company. Section 280E of the Code provides that, with respect to any taxpayer, no deduction or credit is allowed for expenses incurred during a taxable year “in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of Schedule I and II of the CSA) which is prohibited by federal law or the law of any State in which such trade or business is conducted.” Because cannabis is a Schedule I controlled substance under the CSA, Section 280E of the Code by its terms applies to the purchase and sale of cannabis products. If the Service were to take the position that, through our rental agreements with our state-licensed cannabis tenants, we are primarily or vicariously liable under federal law for “trafficking” a Schedule I substance (cannabis) under Section 280E of the Code or for any other violations of the CSA, the Service may apply the provisions of Section 280E of the Code to our company and disallow certain tax deductions, including for employee salaries, depreciation or interest expense. If such tax deductions are disallowed, we would be unable to meet the distribution requirements applicable to REITs under the Code, which could cause us to incur U.S. federal income tax and fail to qualify as a REIT.

In addition, tax legislation originally introduced as the Tax Cuts and Jobs Act and signed into law in December 2017 (the “TCJA”) makes numerous changes to the tax rules that do not affect the REIT qualification rules directly, but may otherwise affect us or our stockholders. Among the changes made by the TCJA are permanently reducing the generally applicable corporate tax rate, generally reducing the tax rate applicable to individuals and other non-corporate taxpayers for tax years beginning after December 31, 2017 and before January 1, 2026, eliminating or modifying certain previously allowed deductions (including substantially limiting interest deductibility and, for individuals, the deduction for non-business state and local taxes), and, for taxable years beginning after December 31, 2017 and before January 1, 2026, providing for preferential rates of taxation through a deduction of up to 20% (subject to certain limitations) on

[Table of Contents](#)

most ordinary REIT dividends and certain trade or business income of non-corporate taxpayers. The TCJA also imposes new limitations on the deduction of net operating losses, which may result in us having to make additional taxable distributions to our stockholders in order to comply with REIT distribution requirements or avoid taxes on retained income and gains. The effect of the significant changes made by the TCJA is highly uncertain, and administrative guidance will be required in order to fully evaluate the effect of many provisions. The effect of any technical corrections with respect to the TCJA could have an adverse effect on us or our stockholders.

General Risk Factors

We are dependent on our key personnel for our success.

We depend upon the efforts, experience, diligence, skill and network of business contacts of our senior management team, and our success will depend on their continued service. The departure of any of our executive officers or key personnel could have a material adverse effect on our business. If any of our key personnel were to cease their employment, our operating results could suffer. Further, we do not intend to maintain key person life insurance that would provide us with proceeds in the event of death or disability of any of our key personnel.

We believe our future success depends upon our senior management team's ability to hire and retain highly skilled managerial, operational and marketing personnel. Competition for such personnel is intense, and we cannot assure you that we will be successful in attracting and retaining such skilled personnel. If we lose or are unable to obtain the services of key personnel, our ability to implement our investment strategies could be delayed or hindered, and the value of our common stock may decline.

Furthermore, we may retain independent contractors to provide various services for us, including administrative services, transfer agent services and professional services. Such contractors have no fiduciary duty to us and may not perform as expected or desired.

The occurrence of cyber incidents or cyberattacks could disrupt our operations, result in the loss of confidential information and/or damage our business relationships and reputation.

We rely on technology to run our business, and as such we are subject to risk from cyber incidents, including cyberattacks attempting to gain unauthorized access to our systems to disrupt operations, corrupt data or steal confidential information, and other electronic security breaches. While we have implemented measures to help mitigate these threats, such measures cannot guarantee that we will be successful in preventing a cyber incident. The occurrence of a cyber incident or cyberattack could disrupt our operations, compromise the confidential information of our employees or tenants, and/or damage our business relationships and reputation.

Contingent or unknown liabilities could materially and adversely affect our business, financial condition, liquidity and results of operations.

We acquired our properties and may in the future acquire properties, subject to liabilities and without any recourse, or with only limited recourse, with respect to unknown liabilities. As a result, if a claim were asserted against us based on ownership of any of these properties, we may have to pay substantial amounts to defend or settle the claim. If the magnitude of such unknown liabilities is high, individually or in the aggregate, our business, financial condition, liquidity and results of operations would be materially and adversely affected.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

[Table of Contents](#)

ITEM 2. PROPERTIES

As of December 31, 2022, we owned the following 110 properties, of which 108 properties were leased with a weighted-average remaining lease term of approximately 15.3 years:

Property	Property Type ⁽¹⁾	Market	Closing Date	Rentable Square Feet			Invested/Committed Capital (in thousands)		
				Operating	Under Development or Redevelopment	Total	Invested Capital	Committed Capital	Total Capital
East Cherry Street	Industrial	Arizona	April 27, 2022	17,000	-	17,000	\$ 5,238	\$ -	\$ 5,238
West Greenhouse Drive	Industrial	Arizona	December 15, 2017	358,000	-	358,000	20,000	-	20,000
64125 19th Avenue	Industrial	California	October 15, 2021	131,000	70,000	201,000	61,984	1,516	63,500
McLane Street	Industrial	California	May 12, 2020	70,000	-	70,000	17,500	-	17,500
63795 19th Avenue	Industrial	California	April 16, 2019	56,000	-	56,000	15,000	-	15,000
North Anza Road	Industrial	California	April 16, 2019	24,000	-	24,000	6,309	-	6,309
North Anza Road & Del Sol Road	Industrial	California	April 16, 2019	22,000	-	22,000	5,788	-	5,788
1804 Needles Highway	Industrial	California	August 29, 2019	6,000	-	6,000	888	-	888
West Broadway	Industrial	California	August 29, 2019	7,000	-	7,000	1,471	-	1,471
3253 Needles Highway	Industrial	California	August 29, 2019	20,000	-	20,000	4,841	-	4,841
3241 & 3247 Needles Highway	Industrial	California	September 11, 2019	46,000	-	46,000	10,100	-	10,100
Sacramento	Industrial	California	February 8, 2019	43,000	-	43,000	12,710	-	12,710
Steele Street	Industrial	Colorado	October 30, 2018	58,000	-	58,000	11,250	-	11,250
Washington Street	Industrial	Colorado	December 14, 2021	18,000	-	18,000	9,917	-	9,917
West Barbary Place	Industrial	Colorado	December 14, 2021	12,000	-	12,000	3,276	-	3,276
Hamilton Road	Industrial	Florida	September 18, 2020	220,000	-	220,000	56,400	-	56,400
West Lake Drive	Industrial	Florida	March 11, 2020	373,000	-	373,000	51,500	-	51,500
NW Highway 441	Industrial	Florida	January 22, 2021	295,000	-	295,000	41,650	-	41,650
Ben Bostic Road	Industrial	Florida	October 23, 2019	120,000	-	120,000	17,000	-	17,000
East Mazon Avenue	Industrial	Illinois	October 30, 2019	66,000	-	66,000	28,000	-	28,000
Revolution Road	Industrial	Illinois	December 21, 2018	166,000	-	166,000	71,000	-	71,000
East 4th Street	Industrial	Illinois	March 6, 2020	266,000	-	266,000	50,000	-	50,000
Industrial Drive	Industrial	Illinois	October 30, 2019	127,000	-	127,000	40,000	-	40,000
S US Highway 45 52	Industrial	Illinois	October 22, 2019	51,000	-	51,000	25,496	104	25,600
Centerpoint Way	Industrial	Illinois	October 22, 2019	39,000	-	39,000	20,950	-	20,950
Adams Street	Industrial	Illinois	August 3, 2021	-	250,000	250,000	47,326	22,824	70,150 (2)
South Street	Industrial	Maryland	August 13, 2021	115,000	-	115,000	28,901	614	29,515
Alaking Court	Industrial	Maryland	May 26, 2017	72,000	-	72,000	33,719	31	33,750
Western Maryland Parkway	Industrial	Maryland	April 13, 2022	84,000	-	84,000	25,000	-	25,000
Hopping Brook Road	Industrial	Massachusetts	May 31, 2018	58,000	-	58,000	30,500	-	30,500
Chestnut Hill Avenue	Industrial	Massachusetts	April 2, 2020	199,000	-	199,000	63,900	-	63,900
Worcester Road	Industrial	Massachusetts	September 1, 2022	104,000	-	104,000	21,500	-	21,500
Canal Street/7 North Bridge Street	Industrial	Massachusetts	July 26, 2019	150,000	-	150,000	43,500	-	43,500
Palmer Road	Industrial	Massachusetts	July 12, 2018	55,000	-	55,000	19,234	516	19,750
Everett Street	Industrial	Massachusetts	January 28, 2022	57,000	-	57,000	16,000	-	16,000 (3)
East Main Street	Industrial	Massachusetts	December 17, 2020	67,000	-	67,000	15,500	-	15,500
Curran Highway	Industrial	Massachusetts	May 26, 2021	71,000	-	71,000	26,181	619	26,800
Hoover Road	Industrial	Michigan	October 9, 2019	205,000	-	205,000	83,045	550	83,595
East Hazel Street	Industrial	Michigan	July 2, 2019	145,000	-	145,000	24,150	-	24,150
Oliver Drive	Industrial	Michigan	April 22, 2020	115,000	-	115,000	32,000	-	32,000
Davis Highway	Industrial	Michigan	April 16, 2021	97,000	104,000	201,000	50,894	12,106	63,000
Harvest Park	Industrial	Michigan	August 2, 2018	56,000	-	56,000	15,799	-	15,799
Executive Drive	Industrial	Michigan	June 7, 2019	45,000	-	45,000	10,000	-	10,000
77th Street Northeast	Industrial	Minnesota	November 8, 2017	89,000	-	89,000	9,710	-	9,710
Industrial Drive	Industrial	Missouri	September 17, 2021	83,000	-	83,000	27,721	529	28,250
East Cheyenne Avenue	Industrial	Nevada	July 12, 2019	43,000	-	43,000	9,600	-	9,600
Munsonhurst Road	Industrial	New Jersey	February 10, 2022	80,000	34,000	114,000	39,500	500	40,000
South Route 73	Industrial	New Jersey	July 13, 2020	123,000	-	123,000	35,000	-	35,000
North West Blvd	Industrial	New Jersey	July 16, 2020	50,000	-	50,000	11,820	-	11,820
Hudson Crossing Drive	Industrial	New York	December 19, 2016	74,000	151,000	225,000	80,562	27,938	108,500
County Route 117	Industrial	New York	October 23, 2017	40,000	324,000	364,000	52,766	10,294	63,060
98th Ave South	Industrial	North Dakota	December 20, 2019	33,000	-	33,000	12,190	-	12,190
Hunts Landing Road	Industrial	Ohio	March 13, 2019	58,000	-	58,000	20,000	-	20,000
Jason Street	Industrial	Ohio	January 31, 2020	98,000	-	98,000	32,200	-	32,200
Springs Way	Industrial	Ohio	January 24, 2020	50,000	-	50,000	12,927	618	13,545
East Tallmadge Ave.	Industrial	Ohio	May 14, 2019	11,000	-	11,000	3,550	-	3,550
Scott Technology Park	Industrial	Pennsylvania	August 7, 2019	56,000	-	56,000	28,000	-	28,000
New Beaver Avenue	Industrial	Pennsylvania	May 13, 2021	239,000	-	239,000	67,750	-	67,750
East Market Street	Industrial	Pennsylvania	November 12, 2019	300,000	-	300,000	94,600	-	94,600
Wayne Avenue	Industrial	Pennsylvania	December 20, 2019	74,000	105,000	179,000	49,800	11,840	61,640
Horton Drive	Industrial	Pennsylvania	May 20, 2019	270,000	-	270,000	42,891	109	43,000
Industrial Street	Industrial	Pennsylvania	June 10, 2020	108,000	-	108,000	23,629	2,021	25,650
Rosanna Avenue	Industrial	Pennsylvania	April 6, 2018	145,000	-	145,000	45,800	-	45,800
FM 969	Industrial	Texas	June 14, 2022	-	85,000	85,000	13,586	8,414	22,000 (4)
Decatur Street	Industrial	Virginia	January 15, 2020	82,000	-	82,000	19,750	-	19,750
Lathrop Industrial Drive SW	Industrial	Washington	December 17, 2020	114,000	-	114,000	17,500	-	17,500
East Glendale Avenue	Retail	Arizona	September 19, 2019	2,000	-	2,000	2,500	-	2,500
Dahlia Street	Retail	Colorado	February 21, 2020	5,000	-	5,000	2,300	-	2,300
East Colfax Avenue	Retail	Colorado	December 14, 2021	2,000	-	2,000	1,558	115	1,673
North 2nd Street	Retail	Colorado	December 14, 2021	6,000	-	6,000	1,307	98	1,405
West Railroad Avenue	Retail	Colorado	December 14, 2021	4,000	-	4,000	1,148	-	1,148
Southgate Pl	Retail	Colorado	February 19, 2020	3,000	-	3,000	1,049	-	1,049
Wewatta Street	Retail	Colorado	December 14, 2021	4,000	-	4,000	7,338	-	7,338
Southgate Place	Retail	Colorado	December 14, 2021	6,000	-	6,000	4,878	-	4,878
South Peoria Court	Retail	Colorado	December 14, 2021	5,000	-	5,000	4,229	-	4,229
Highway 6 & 24	Retail	Colorado	December 14, 2021	4,000	-	4,000	4,187	-	4,187
North College Avenue	Retail	Colorado	December 14, 2021	5,000	-	5,000	3,977	-	3,977
East Quincy Avenue	Retail	Colorado	December 14, 2021	4,000	-	4,000	3,601	-	3,601
East Montview Boulevard	Retail	Colorado	December 14, 2021	5,000	-	5,000	1,991	-	1,991

Table of Contents

South Federal Blvd	Retail	Colorado	December 14, 2021	4,000	-	4,000	1,778	-	1,778
Santa Fe Trail	Retail	Colorado	December 14, 2021	9,000	-	9,000	1,728	-	1,728
Water Street	Retail	Colorado	December 14, 2021	4,000	-	4,000	1,444	-	1,444
Gregory Street	Retail	Colorado	December 14, 2021	4,000	-	4,000	1,321	-	1,321
West 20th Avenue	Retail	Colorado	December 14, 2021	5,000	-	5,000	1,089	-	1,089
South Federal Blvd.	Retail	Colorado	December 14, 2021	2,000	-	2,000	890	-	890
West 6th Street	Retail	Colorado	December 14, 2021	2,000	-	2,000	400	-	400
Elm Avenue	Retail	Colorado	December 14, 2021	13,000	-	13,000	400	-	400
Bent Avenue North	Retail	Colorado	December 14, 2021	2,000	-	2,000	400	-	400
Coolidge Rd	Retail	Michigan	October 25, 2019	3,000	-	3,000	3,372	28	3,400
South Cedar Street	Retail	Michigan	November 4, 2019	14,000	-	14,000	2,225	-	2,225
West Pierson Road	Retail	Michigan	November 4, 2019	6,000	-	6,000	2,180	-	2,180
Wilder Road	Retail	Michigan	November 4, 2019	4,000	-	4,000	1,740	-	1,740
East Front Street	Retail	Michigan	November 25, 2019	2,000	-	2,000	1,272	-	1,272
South Mason Drive	Retail	Michigan	November 8, 2019	2,000	-	2,000	995	-	995
N Delsea Dr	Retail	New Jersey	July 16, 2020	4,000	-	4,000	2,165	-	2,165
24th Street East	Retail	North Dakota	December 14, 2021	5,000	-	5,000	2,045	-	2,045
Highway 2 East	Retail	North Dakota	December 14, 2021	4,000	-	4,000	1,614	-	1,614
Main Street	Retail	Pennsylvania	December 14, 2021	3,000	-	3,000	1,058	-	1,058
South 17th Street	Retail	Pennsylvania	March 23, 2022	3,000	-	3,000	2,750	-	2,750
Esperanza Street	Industrial/Retail	California	July 23, 2019	35,000	-	35,000	13,977	273	14,250
Grape Street	Industrial/Retail	Colorado	December 14, 2021	33,000	-	33,000	8,206	-	8,206
US 50 Business and Baxter Road	Industrial/Retail	Colorado	December 14, 2021	8,000	-	8,000	2,165	-	2,165
South Fox Street	Industrial/Retail	Colorado	December 14, 2021	6,000	-	6,000	1,299	-	1,299
West Street	Industrial/Retail	Massachusetts	June 30, 2020	124,000	-	124,000	24,806	3,944	28,750
Mozzone Boulevard	Industrial/Retail	Massachusetts	May 16, 2022	104,000	-	104,000	40,000	-	40,000
Stephenson Highway	Industrial/Retail	Michigan	September 1, 2020	63,000	-	63,000	27,934	566	28,500
Hoover Road	Industrial/Retail	Michigan	May 14, 2021	85,000	-	85,000	17,071	159	17,230
Leah Avenue	Industrial/Retail	Texas	March 10, 2021	-	63,000	63,000	8,231	19,169	27,400
Inland Center Drive	Under Development	California	November 16, 2020	-	192,000	192,000	35,729	-	35,729
Perez Road	Under Development	California	March 25, 2022	-	23,000	23,000	8,158	-	8,158
63795 19th Avenue Expansion	Under Development	California	February 5, 2021	-	180,000	180,000	24,152	-	24,152 (5)
Total				<u>7,134,000</u>	<u>1,581,000</u>	<u>8,715,000</u>	<u>\$ 2,208,926</u>	<u>\$ 125,495</u>	<u>\$ 2,334,421</u>

- (1) "Industrial" reflects facilities utilized or expected to be utilized for regulated cannabis cultivation and/or distribution activities, which can consist of industrial and/or greenhouse space.
- (2) The purchase price included approximately \$3.2 million attributable to the property which did not satisfy the requirements for sale-leaseback accounting; therefore, this amount is recognized as a financing note receivable and is included in other assets, net on our consolidated balance sheet.
- (3) The acquisition of the property did not satisfy the requirements for sale-leaseback accounting; therefore, this amount is recognized as a financing note receivable and is included in other assets, net on our consolidated balance sheet.
- (4) The purchase price included approximately \$908,000 attributable to the property which did not satisfy the requirements for sale-leaseback accounting; therefore, this amount is recognized as a financing note receivable and is included in other assets, net on our consolidated balance sheet.
- (5) Represents parcel under development that is part of the lease with Kings Garden at the 19th Avenue property.

See Item 1., "Business — Our Properties," for more information about our properties.

In November 2022, we sold one of our Pennsylvania properties that was leased to a subsidiary of Maitri for \$23.5 million (approximately \$461 per square foot), excluding transaction costs, and recognized a gain on sale of property of approximately \$3.6 million.

ITEM 3. LEGAL PROCEEDINGS

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

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock is traded on the NYSE under the symbol "IIPR." As of February 28, 2023, there were 30 holders of record of our common shares. This number excludes our common shares owned by stockholders holding under nominee security position listings.

We have elected to be treated as a REIT for U.S. federal income tax purposes. U.S. federal income tax law generally requires that a REIT distribute annually at least 90% of its REIT taxable income, determined without regard to the deduction for dividends paid and excluding net capital gain (which does not equal net income as calculated in accordance with GAAP), and that it pay U.S. federal income tax at regular corporate rates to the extent that it annually distributes less than 100% of its taxable income.

To satisfy the requirements to qualify as a REIT and generally not be subject to U.S. federal income tax, we intend to make quarterly distributions of all or substantially all of our taxable income to holders of our common stock out of assets legally available therefor. However, we cannot assure you that distributions will be made or sustained. Any distributions we make will be at the direction of our board of directors and will depend upon a number of factors, including our actual results of operations, economic conditions, maintenance of REIT qualification and the applicable provisions of the MGCL and such other factors as our board may determine in its sole discretion.

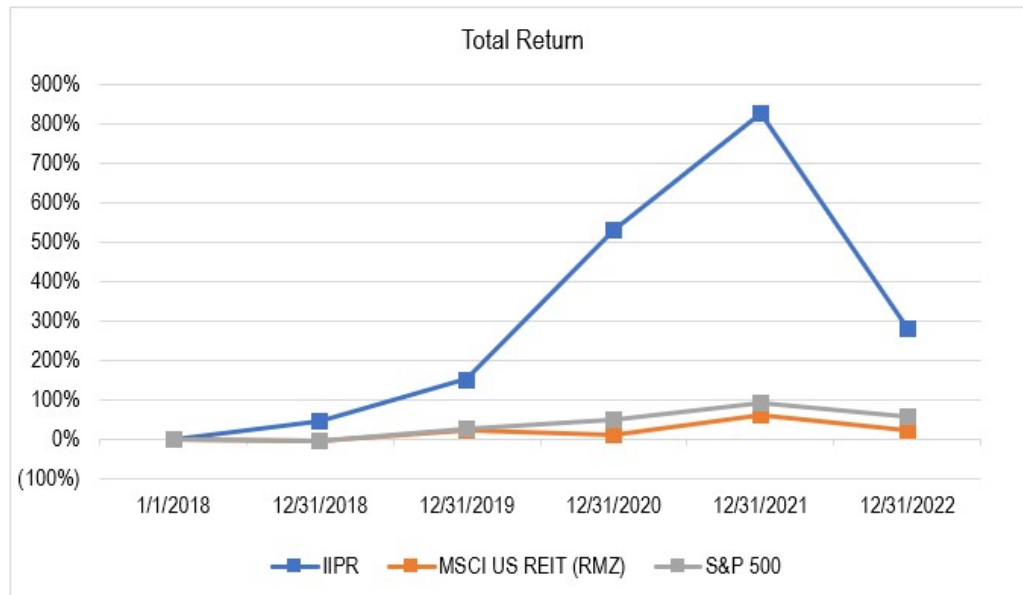
Our organizational documents permit us to make distributions from any source. If our cash available for distribution is insufficient to cover our distributions, we expect to use the proceeds from the issuance of securities, the proceeds from borrowings or other sources to pay distributions. During our initial years of operation, we expect that a portion of our distributions declared may be paid from offering proceeds, which would constitute a return of capital to our stockholders.

We anticipate that our distributions generally will be taxable as ordinary income to our stockholders, although a portion of the distributions may be designated by us as qualified dividend income or capital gain or may constitute a return of capital. We will furnish annually to each of our stockholders a statement setting forth distributions paid during the preceding year and their characterization as ordinary income, return of capital, qualified dividend income or capital gain.

Information about our equity compensation plans and other related stockholder matters is incorporated by reference in Item 12 of Part III of this Annual Report on Form 10-K.

Stock Performance Graph

The following graph shows a comparison from January 1, 2018 to December 31, 2022 of cumulative total stockholder return, calculated on a dividends reinvested basis, for Innovative Industrial Properties, Inc., the S&P 500 Stock Index, or the S&P 500, and the MSCI US REIT Index, which includes all tax-qualified equity REITs listed in the United States. Note that historic stock price performance is not necessarily indicative of future stock price performance. The stock performance graph should not be deemed filed or incorporated by reference into any other filing made by us under the Securities Act or the Exchange Act, except to the extent that we specifically incorporate the stock performance graph by reference in another filing.



Source: SNL Financial

Recent Sales of Unregistered Securities

During the year ended December 31, 2022, we issued 413,166 shares of our common stock upon exchange by holders of approximately \$26.9 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.

For information regarding our outstanding indebtedness, which includes our Notes due 2026 and our Exchangeable Senior Notes, see Note 7 in the notes to our consolidated financial statements.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the consolidated financial statements and notes thereto appearing elsewhere in this report. We make statements in this section that are forward-looking statements within the meaning of the federal securities laws. For a complete discussion of forward-looking statements, see the section above entitled "Cautionary Statement Regarding Forward-Looking Statements." Certain risk factors may cause our actual results, performance or achievements to differ materially from those expressed or implied by the following discussion. For a discussion of such risk factors, see Item 1A, "Risk Factors."

Overview

We are an internally-managed 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 leased and expect to continue to lease our properties on a triple-net lease basis, where the tenant is generally 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 December 31, 2022, we had 19 full-time employees.

As of December 31, 2022, we owned 110 properties comprising approximately 8.7 million square feet (including approximately 1.6 million rentable square feet under development/redevelopment) in 19 states. As of December 31, 2022, we had invested approximately \$2.2 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 approximately \$125.5 million to fund draws to certain tenants and sellers for construction and improvements at our properties. Of the approximately \$125.5 million committed to fund draws to certain tenants and sellers for construction and improvements at our properties, approximately \$28.9 million was incurred but not funded as of December 31, 2022. These statistics do not include an \$18.5 million loan commitment from us to a developer for construction of a regulated cannabis cultivation and processing facility in California, of which we have funded approximately \$18.0 million as of December 31, 2022.

Of these properties, we include 108 properties in our operating portfolio, which were 100% leased to state-licensed cannabis operators as of December 31, 2022, with a weighted-average remaining lease term of approximately 15.3 years. Rent collection for our operating portfolio (calculated as base rent and property management fees collected as a percentage of contractually due base rent and property management fees, including an aggregate of approximately \$2.7 million of security deposits applied for payment of rent for our leases with Kings Garden and Sozo Health, Inc. ("Sozo")) was approximately 97% for the year ended December 31, 2022. Rent collection for our operating portfolio (including approximately \$541,000 of security deposits applied for payment of rent from our lease with Sozo) was approximately 94% for the three months ended December 31, 2022.

We do not include in our operating portfolio two of our properties, which were previously leased to Kings Garden, and an expansion project at a property where Kings Garden continues to occupy the property pursuant to a confidential, contingent settlement agreement, all of which were under development as of December 31, 2022, and together are expected to comprise approximately 395,000 rentable square feet upon completion of development.

Factors Impacting Our Operating Results

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

Rental Revenues

We receive income primarily from rental revenue generated by the properties that we acquire. The amount of rental revenue 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 current and future 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. Changes in 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 continue 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.

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 is experiencing a sustained increase in inflation rates, 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

Recently, financial markets have been volatile, reflecting heightened geopolitical risks and material tightening of financial conditions since the U.S. Federal Reserve began increasing interest rates in spring of 2022 and continued uncertainty regarding monetary policy.

Driven in part by overall macroeconomic conditions, capital availability has significantly declined for regulated cannabis operators. According to Viridian, total equity and debt capital raising for public and private cannabis companies in North America decreased by more than 65% in 2022 versus 2021. Even more pronounced, total capital raised for the U.S. regulated cannabis cultivation and retail sector was down over 70% in 2022 versus 2021, with equity capital raised in the sector down over 96% and no equity deal in 2022 raising more than \$25 million, according to Viridian. Cannabis stock prices (measured by the MSOS ETF) had declined more than 70% by the end of 2022, and were trading at multi-year lows.

According to Viridian, mergers and acquisitions activity in the U.S. regulated cannabis industry also declined significantly in 2022, with aggregate transaction volume in dollar terms down nearly 70% on nearly 50% fewer transactions versus 2021.

Capital raising activities by U.S. REITs experienced a steep decline in 2022, with that decline more pronounced in the second half of 2022. According to NAREIT, U.S. REITs raised \$41.5 billion in debt and equity during 2022, compared to \$133.6 billion in 2021, representing the lowest level since 2009.

Significant Tenants and Concentrations of Risk

As of December 31, 2022, we owned 110 properties located in 19 states. 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 December 31, 2022, none of our properties accounted for 5% or more of our net real estate held for investment. See Note 2 in the notes to the consolidated financial statements for further information regarding the tenants in our portfolio that represented the largest percentage of our total rental revenues for the year ended December 31, 2022.

In July 2022, Kings Garden, a tenant of ours at six properties that we own in southern California, defaulted on its obligations to pay rent. In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan. See Part I, Item 3. Legal Proceedings and Note 11 “Commitments and Contingencies — Litigation” to our consolidated financial statements for more information regarding Kings Garden, Parallel and Green Peak.

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. We generally expect to structure our leases so that the tenant is responsible for real estate 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 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

See Note 6 in the notes to the consolidated financial statements for information regarding our investments in real estate and property portfolio activity during the year ended December 31, 2022. See Item 7, “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Results of Operations” in our Annual Report on Form 10-K for the year ended December 31, 2021 for a comparison of the years ended December 31, 2021 and December 31, 2020.

Comparison of the Years Ended December 31, 2022 and 2021 (in thousands)

	Years Ended December 31,		
	2022	2021	Change
Revenues:			
Rental (including tenant reimbursements)	\$ 274,377	\$ 204,551	\$ 69,826
Other	1,982	—	1,982
Total revenues	276,359	204,551	71,808
Expenses:			
Property expenses	10,520	4,443	6,077
General and administrative expense	38,520	22,961	15,559
Depreciation and amortization expense	61,303	41,776	19,527
Total expenses	110,343	69,180	41,163
Gain on sale of real estate	3,601	—	3,601
Income from operations	169,617	135,371	34,246
Interest and other income	3,195	397	2,798
Interest expense	(18,301)	(18,086)	(215)
Loss on exchange of Exchangeable Senior Notes	(125)	(3,692)	3,567
Net income	154,386	113,990	40,396
Preferred stock dividends	(1,352)	(1,352)	—
Net income attributable to common stockholders	\$ 153,034	\$ 112,638	\$ 40,396

Revenues

Rental Revenues. Rental revenues for the year ended December 31, 2022 increased by approximately \$69.8 million, or 34%, to approximately \$274.4 million, compared to approximately \$204.6 million for the year ended December 31, 2021. The increase in rental revenue was attributable to:

- The nine properties we acquired in 2022 which generated approximately \$10.2 million of rental revenue in 2022;

[Table of Contents](#)

- The 37 properties we acquired in 2021 which generated approximately \$47.9 million of rental revenue in 2022, including related rents on amendments which increased the improvement allowances on four of the leases, compared to approximately \$18.6 million in 2021, an increase of approximately \$29.3 million;
- The amendments to increase improvement allowances for eight properties that we acquired prior to 2021, the additional purchase of land which was included in the corresponding lease for one property, the annual rent escalations on the 64 properties we acquired prior to 2021, which collectively resulted in approximately \$24.6 million in additional rental revenue during the year ended December 31, 2022 versus 2021;
- An increase of approximately \$5.7 million in tenant reimbursements revenue for property tax and insurance, to approximately \$10.1 million for the year ended December 31, 2022, compared to approximately \$4.4 million for the year ended December 31, 2021.

The increase in rental revenues was partially offset by a decrease in rental revenues of approximately \$716,000, which was the result of the cessation of lease payments after the sale of one of our Pennsylvania properties that was leased to a subsidiary of Maitri in November 2022.

Rental revenues for the year ended December 31, 2022 also included an aggregate of approximately \$3.3 million of security deposits applied for payment of rent (including tenant reimbursements) for our leases with Kings Garden and Sozo.

Rental revenues for the year ended December 31, 2022 were negatively impacted by non-collection of rent during the period totaling approximately \$8.6 million (consisting of approximately \$8.2 million of contractual base rents and property management fees from four tenants, Kings Garden, Medical Investor Holdings, LLC (“Vertical”), Green Peak and Parallel, and approximately \$440,000 for tenant reimbursements for property insurance premiums and property taxes from two tenants, Kings Garden and Vertical).

Other Revenues. Other revenues for the year ended December 31, 2022 consists of interest revenue related to leases for property acquisitions that did not satisfy the requirements for sale-leaseback accounting.

Expenses

Property Expenses. Property expenses for the year ended December 31, 2022 increased by approximately \$6.1 million, compared to 2021. The increase was primarily due to new property acquisitions and additional investment in existing properties which resulted in higher property insurance premiums and property taxes that we paid for our properties. Property expenses are generally reimbursable to us by the tenants under the terms of the leases. For the year ended December 31, 2022, property expenses included approximately \$440,000 of non-reimbursed expenses related to Kings Garden and Vertical lease defaults.

General and Administrative Expense. General and administrative expense for the year ended December 31, 2022 increased by approximately \$15.5 million, or 68%, to approximately \$38.5 million, compared to approximately \$23.0 million for the year ended December 31, 2021. The increase in general and administrative expense was primarily due to higher compensation to employees, the hiring of additional employees, higher public company, travel and occupancy costs and approximately \$3.0 million in litigation-related expenses incurred during the year ended December 31, 2022 related to matters described in Note 11 “Commitments and Contingencies – Litigation” to our consolidated financial statements included in this report.

Compensation expense for the years ended December 31, 2022 and 2021 included approximately \$17.5 million and \$8.6 million, respectively, of non-cash stock-based compensation.

Depreciation and Amortization Expense. The increase in depreciation and amortization expense was related to depreciation on properties that we acquired and the placement into service of construction and improvements at certain of our properties.

[Table of Contents](#)

Interest and Other Income. Interest and other income primarily related to interest earned on our short-term investments and cash and cash equivalents. The increase in interest and other income was primarily due to higher interest bearing investments.

Interest Expense. Interest expense related to our Exchangeable Senior Notes issued in February 2019 and Notes due 2026 issued in May 2021. For the year ended December 31, 2022, interest expense increased by approximately \$215,000, or 1%, to approximately \$18.3 million, compared to \$18.1 million for the year ended December 31, 2021. The increase in interest expense was primarily due to the additional interest expense on our Notes due 2026 issued in May 2021, partially offset by a decrease in interest expense on our Exchangeable Senior Notes due to exchanges by holders of approximately \$26.9 million of outstanding principal amount of our Exchangeable Senior Notes during the year ended December 31, 2022 and the induced exchange of approximately \$110.4 million principal amount of our Exchangeable Senior Notes in December 2021. See Note 7 in the notes to the consolidated financial statements included in this report for further information.

Gain on Sale of Real Estate. Gain on sale of real estate is attributable to the sale in November 2022 of one of our Pennsylvania properties that was leased to a subsidiary of Maitri for \$23.5 million, excluding transactions costs.

Loss on Exchange of Exchangeable Senior Notes. Loss on exchange of Exchangeable Senior Notes is attributable to the exchange agreements we executed with certain holders of our Exchangeable Senior Notes. See Note 7 in the notes to the consolidated financial statements included in this report for further information.

Cash Flows

The following summary discussion of our cash flows is based on the consolidated statements of cash flows in Item 8, “Financial Statements and Supplementary Data” and is not meant to be an all-inclusive discussion of the changes in our cash flows for the periods presented below (in thousands):

	Year Ended December 31,		Change
	2022	2021	
Net cash provided by operating activities	\$ 234,130	\$ 188,747	\$ 45,383
Net cash used in investing activities	(396,201)	(384,093)	(12,108)
Net cash provided by financing activities	164,224	155,759	8,465
Ending cash, cash equivalents and restricted cash	88,572	86,419	2,153

Cash flows provided by operating activities for the years ended December 31, 2022 and 2021 were approximately \$234.1 million and \$188.7 million, respectively. Cash flows provided by operating activities primarily related to contractual rent and security deposits from our properties, partially offset by general and administrative expenses. Cash flows provided by operating activities increased from 2021 to 2022 primarily due to leases for properties we acquired during these time periods, annual escalations of base rent on our leases, and amendments to existing leases to increase improvement allowances at those properties, which resulted in a corresponding increase in base rents, partially offset by rent payment defaults by certain tenants, higher cash compensation to employees, higher public company, travel and occupancy costs and increased litigation expenses.

Cash flows used in investing activities for the years ended December 31, 2022 and 2021 were approximately \$396.2 million and \$384.1 million, respectively. Cash flows used in investing activities increased from 2021 to 2022 primarily due to less net maturities of short-term investments, partially offset by a decrease in purchases of new properties, a decrease in funding of improvement allowances and construction funding, and receipt of the proceeds from sale of one of our Pennsylvania properties previously leased to Maitri.

Cash flows provided by financing activities for the year ended December 31, 2022 were approximately \$164.2 million, primarily related to approximately \$352.0 million in net proceeds from the issuance of our common stock, partially offset by dividend payments of approximately \$185.3 million to common and preferred stockholders and approximately \$2.5 million related to net share settlement of equity awards to pay the required withholding taxes upon vesting of restricted stock for certain employees.

[Table of Contents](#)

Cash flows provided by financing activities for the year ended December 31, 2021 were approximately \$155.8 million, primarily related to approximately \$293.2 million in net proceeds from the issuance of our Notes due 2026, partially offset by dividend payments of approximately \$132.3 million to common and preferred stockholders, approximately \$3.4 million related to net share settlement of equity awards to pay the required withholding taxes upon vesting of restricted stock for certain employees, and approximately \$1.7 million related to the induced exchange of Exchangeable Senior Notes pursuant to the Exchange Transactions.

Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements. We expect to use significant cash to acquire additional properties, develop and redevelop existing properties, pay dividends to our stockholders, fund our operations, service our Exchangeable Senior Notes and Notes due 2026 and meet other general business needs.

Sources and Uses of Cash

We derive substantially all of our revenues from the leasing of our properties, collecting rental income and operating expense reimbursements based on contractual arrangements with our tenants. This source of revenue represents our primary source of liquidity to fund our dividends, Exchangeable Senior Notes and Notes due 2026 interest payments, 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 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 the property costs not paid by the tenant during the time it takes to re-lease or sell the property.

As of December 31, 2022, we owned 110 properties. Of these properties, we include 108 properties in our operating portfolio, which were 100% leased to state-licensed cannabis operators, with a weighted-average remaining lease term of approximately 15.3 years. Rent collection for our operating portfolio (calculated as base rent and property management fees collected as a percentage of contractually due base rent and property management fees, including an aggregate of approximately \$2.7 million of security deposits applied for payment of rent for our leases with Kings Garden and Sozo) was approximately 97% for the year ended December 31, 2022. Rent collection for our operating portfolio (including approximately \$541,000 of security deposits applied for payment of rent for our lease with Sozo) was approximately 94% for the three months ended December 31, 2022.

In July 2022, Kings Garden defaulted on its obligations to pay rent at all of the properties that Kings Garden leases from us. Two of our properties, which were previously leased to Kings Garden, and an expansion project at a property where Kings Garden continues to occupy the property pursuant to a confidential, contingent settlement agreement, were under development as of December 31, 2022, and together are expected to comprise approximately 395,000 rentable square feet upon completion of development. In November 2022, Parallel defaulted on its obligations to pay rent at one of our properties in Pennsylvania, and Green Peak defaulted on its obligations to pay rent at one of our properties in Michigan. See Part I, Item 3. Legal Proceedings and Note 11 “Commitments and Contingencies — Litigation” to our consolidated financial statements for more information regarding Kings Garden, Parallel and Green Peak.

We expect to incur some property-level operating costs from time to time in periods during which properties that become vacant are being remarketed. 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. For the year ended December 31, 2022, property expenses included approximately \$440,000 of non-reimbursed expenses related to Kings Garden and Vertical lease defaults.

[Table of Contents](#)

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. 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. On May 25, 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 all of the direct and indirect subsidiaries of the Operating Partnership, and rank equally in right of payment with all of the Operating Partnership's existing and future senior unsecured indebtedness, including the Exchangeable Senior Notes. 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 December 31, 2022. Subject to the terms of the indenture, any new subsidiary of the Operating Partnership will also guarantee the Notes due 2026. 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 April 2022, we issued 1,815,790 shares of common stock in an underwritten public offering, which includes the exercise in full of the underwriters' option to purchase an additional 236,842 shares, resulting in net proceeds of approximately \$330.9 million.

During the year ended December 31, 2022, we issued 413,166 shares of our common stock upon exchange by holders of approximately \$26.9 million of outstanding principal amount of our Exchangeable Senior Notes.

During the year ended December 31, 2022, we sold 117,023 shares of our common stock for net proceeds of approximately \$21.1 million under the Prior ATM Program.

In January 2023, we terminated the Prior ATM Program and entered into new equity distribution agreements for the ATM Program, pursuant to which we may offer and sell from time to time up to \$500.0 million of shares of our common stock. As of February 28, 2023, we had not issued any shares of common stock under this ATM Program.

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

We expect to meet our short-term and long-term liquidity needs through cash and short-term investments on hand, cash flows from operations and cash flows 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.

Recently, financial markets have been volatile in general, which has also significantly reduced our access to capital. If sustained, this would 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.

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

[Table of Contents](#)

companies are not REITs can. During 2022, we declared cash dividends on our common stock totaling \$7.10 per share, and cash dividends on our Series A Preferred Stock totaling \$2.25 per share. 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 Exchangeable Senior Notes, and make accretive new investments.

	Year Ended December 31,		
	2022	2021	2020
Ordinary income distributions	\$ 6.929636	\$ 5.340000	\$ 3.940000
Long-term capital gain distributions ⁽¹⁾	0.100364	—	—
Total	<u>\$ 7.030000</u>	<u>\$ 5.340000</u>	<u>\$ 3.940000</u>

(1) Unrecaptured Section 1250 Gain of \$0.058864 represents additional characterization of and is part of long-term capital gain distributions for the year ended December 31, 2022.

The common stock distribution with a record date of December 30, 2022 was a split-year distribution, with \$0.33 allocable to 2022 for federal income tax purposes and \$1.47 allocable to 2023 for federal income tax purposes. The common stock distribution with a record date of December 31, 2021 was a split-year distribution, with \$0.10 allocable to 2021 for federal income tax purposes and \$1.40 allocable to 2022 for federal income tax purposes. The common stock distribution with a record date of December 31, 2020 was a split-year distribution, with \$0.22 allocable to 2020 for federal income tax purposes and \$1.02 allocable to 2021 for federal income.

Contractual Obligations

The following table summarizes our contractual obligations as of December 31, 2022 (in thousands):

Payments Due by Year	Notes due 2026	Exchangeable Senior Notes	Interest	Office Rent	Total
2023	\$ —	\$ —	\$ 16,742	\$ 496	\$ 17,238
2024	—	6,436	16,534	511	23,481
2025	—	—	16,500	526	17,026
2026	300,000	—	6,646	543	307,189
2027	—	—	—	45	45
Total	<u>\$ 300,000</u>	<u>\$ 6,436</u>	<u>\$ 56,422</u>	<u>\$ 2,121</u>	<u>\$ 364,979</u>

As of December 31, 2022, we had (1) approximately \$96.6 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; and (2) approximately \$479,000 outstanding in commitments to fund a 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 and construction loan funding generally may be requested by the borrower from time to time, subject to satisfaction of certain conditions.

Supplemental Guarantor Information

In March 2020, the SEC adopted amendments to Rule 3-10 of Regulation S-X and created Rule 13-01 to simplify disclosure requirements related to certain registered securities. The amendments became effective on January 4, 2021. Our Notes due 2026 and our Exchangeable Senior Notes are the unsecured senior obligations of our Operating Partnership and are fully and unconditionally guaranteed on an unsecured basis, jointly and severally, by us and all of our direct and indirect wholly-owned subsidiaries, which are listed on Exhibit 22.1 hereto and which we refer to collectively as “Subsidiary Guarantors.” Only the Notes due 2026 and the related guarantees are registered securities under the Securities Act. See Note 7 in the notes to our consolidated financial statements for a description of certain terms of our Notes due 2026.

The offer and sale of the Exchangeable Senior Notes and the related guarantees were not and will not be registered under the Securities Act or the securities laws of any other jurisdiction and instead were issued in reliance upon an

exemption from such registration. Unless they are subsequently registered under the Securities Act, the Exchangeable Senior Notes and the related guarantees may be offered and sold only in transactions that are exempt from the registration requirements under the Securities Act and the applicable securities laws of any other jurisdiction.

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 and the Subsidiary Guarantors 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 and the Subsidiary Guarantors because the combined assets, liabilities, and results of operations of the Operating Partnership and the Subsidiary Guarantors are not materially different than the corresponding amounts in our 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 and Other Metrics

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 NAREIT. NAREIT defines FFO as the most commonly accepted and reported non-GAAP 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 and amortization and impairment related to real estate properties, and after adjustments for unconsolidated partnerships and joint ventures.

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 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.

[Table of Contents](#)

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 non-cash items.

For all periods presented (other than the twelve months ended December 31, 2020), FFO (diluted), Normalized FFO, 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. The Exchangeable Senior Notes were anti-dilutive for purposes of calculating earnings per diluted share for all other periods presented, and as such, were treated as anti-dilutive for purposes of calculating FFO, Normalized FFO, AFFO and FFO, Normalized FFO and AFFO per diluted share for such periods.

For the three months ended March 31, 2022, 102,333 shares issuable upon vesting of the performance share units (“PSUs”) were dilutive, as the performance thresholds for vesting of these PSUs were met as measured as of March 31, 2022. No shares were issuable upon vesting of the PSUs for the three months ended December 31, 2022, September 30, 2022 and June 30, 2022 and the twelve months ended December 31, 2022, as the performance thresholds for vesting of the PSUs were not met as measured as of the end of those respective periods.

For the three and twelve months ended December 31, 2021, 81,414 shares issuable upon vesting of PSUs granted to certain employees in January 2021 were dilutive, as the performance thresholds for vesting of these PSUs were met as measured as of December 31, 2021. For the three months ended September 30, 2021, 78,582 shares issuable upon vesting of the PSUs were dilutive, as the performance thresholds for vesting of these PSUs were met as measured as of September 30, 2021. No shares were issuable upon vesting of the PSUs for the three months ended June 30, 2021 and March 31, 2021, as the performance thresholds for vesting of the PSUs were not met as measured as of the end of those respective periods.

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, Normalized 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.

[Table of Contents](#)

The table below is a reconciliation of net income attributable to common stockholders to FFO, Normalized FFO and AFFO for the years ended December 31, 2022, 2021 and 2020 (in thousands, except share and per share amounts):

	Years Ended December 31,		
	2022	2021	2020
Net income attributable to common stockholders	\$ 153,034	\$ 112,638	\$ 64,378
Real estate depreciation and amortization	61,303	41,776	28,025
Gain on sale of real estate	(3,601)	—	—
FFO attributable to common stockholders (basic)	\$ 210,736	\$ 154,414	\$ 92,403
Cash and non-cash interest expense on Exchangeable Senior Notes	546	7,517	—
FFO attributable to common stockholders (diluted)	\$ 211,282	\$ 161,931	\$ 92,403
Acquisition-related expense	110	26	94
Financing expense	367	—	211
Litigation-related expense	3,010	—	—
Loss on exchange of Exchangeable Senior Notes	125	3,692	—
Normalized FFO attributable to common stockholders (diluted)	214,894	165,649	92,708
Stock-based compensation	17,507	8,616	3,330
Non-cash interest expense	1,255	715	2,040
Above-market lease amortization	92	4	—
AFFO attributable to common stockholders (diluted)	\$ 233,748	\$ 174,984	\$ 98,078
FFO per common share – diluted	\$ 7.64	\$ 6.17	\$ 4.72
Normalized FFO per common share – diluted	\$ 7.77	\$ 6.31	\$ 4.74
AFFO per common share – diluted	\$ 8.45	\$ 6.66	\$ 5.01
Weighted average common shares outstanding – basic	27,345,047	23,903,017	19,443,602
Restricted stock and RSUs	116,046	96,174	114,017
PSUs	—	81,414	—
Dilutive effect of Exchangeable Senior Notes	202,076	2,180,550	—
Weighted average common shares outstanding – diluted	27,663,169	26,261,155	19,557,619

[Table of Contents](#)

The table below is a reconciliation of quarterly net income attributable to common stockholders to FFO, Normalized FFO and AFFO for the years ended December 31, 2022 and 2021 (in thousands, except share and per share amounts):

	Three Months Ended ⁽¹⁾			
	December 31, 2022	September 30, 2022	June 30, 2022	March 31, 2022
Net income attributable to common stockholders	\$ 41,168	\$ 37,278	\$ 39,876	\$ 34,712
Real estate depreciation and amortization	16,302	15,900	15,233	13,868
Gain on sale of real estate	(3,601)	—	—	—
FFO attributable to common stockholders (basic)	\$ 53,869	\$ 53,178	\$ 55,109	\$ 48,580
Cash and non-cash interest expense on Exchangeable Senior Notes	72	72	68	334
FFO attributable to common stockholders (diluted)	\$ 53,941	\$ 53,250	\$ 55,177	\$ 48,914
Acquisition-related expense	—	15	—	95
Financing expense	249	14	104	—
Litigation-related expense	779	2,112	119	—
Loss on exchange of Exchangeable Senior Notes	—	—	7	118
Normalized FFO attributable to common stockholders (diluted)	\$ 54,969	\$ 55,391	\$ 55,407	\$ 49,127
Stock-based compensation	4,312	4,379	4,437	4,379
Non-cash interest expense	321	316	311	307
Above-market lease amortization	23	23	23	23
AFFO attributable to common stockholders (diluted)	\$ 59,625	\$ 60,109	\$ 60,178	\$ 53,836
FFO per common share – diluted	\$ 1.92	\$ 1.89	\$ 1.97	\$ 1.86
Normalized FFO per common share – diluted	\$ 1.95	\$ 1.97	\$ 1.98	\$ 1.87
AFFO per common share – diluted	\$ 2.12	\$ 2.13	\$ 2.15	\$ 2.04
Weighted-average common shares outstanding – basic	27,938,804	27,938,568	27,850,561	25,620,253
Restricted stock and RSUs	117,831	118,567	82,387	110,457
PSUs	—	—	—	102,333
Dilutive effect of Exchangeable Senior Notes	103,626	100,799	103,742	507,181
Weighted-average common shares outstanding – diluted	28,160,261	28,157,934	28,036,690	26,340,224

[Table of Contents](#)

	Three Months Ended ⁽¹⁾			
	December 31, 2021	September 30, 2021	June 30, 2021	March 31, 2021
Net income attributable to common stockholders	\$ 28,292	\$ 29,756	\$ 29,001	\$ 25,589
Real estate depreciation and amortization	12,205	10,891	9,841	8,839
FFO attributable to common stockholders (basic)	\$ 40,497	\$ 40,647	\$ 38,842	\$ 34,428
Cash and non-cash interest expense	1,880	1,885	1,879	1,873
FFO attributable to common stockholders (diluted)	\$ 42,377	\$ 42,532	\$ 40,721	\$ 36,301
Acquisition-related expense	7	—	11	8
Loss on exchange of Exchangeable Senior Notes	3,692	—	—	—
Normalized FFO attributable to common stockholders (diluted)	\$ 46,076	\$ 42,532	\$ 40,732	\$ 36,309
Stock-based compensation	2,192	2,191	2,132	2,101
Non-cash interest expense	298	299	118	—
Above-market lease amortization	4	—	—	—
AFFO attributable to common stockholders (diluted)	\$ 48,570	\$ 45,022	\$ 42,982	\$ 38,410
FFO per common share – diluted	\$ 1.61	\$ 1.62	\$ 1.56	\$ 1.39
Normalized FFO per common share – diluted	\$ 1.75	\$ 1.62	\$ 1.56	\$ 1.39
AFFO per common share – diluted	\$ 1.85	\$ 1.71	\$ 1.64	\$ 1.47
Weighted-average common shares outstanding – basic	23,941,930	23,890,537	23,889,761	23,889,398
Restricted stock and RSUs	98,093	98,093	96,230	92,194
PSUs	81,414	78,582	—	—
Dilutive effect of Exchangeable Senior Notes	2,142,148	2,193,492	2,182,691	2,170,959
Weighted-average common shares outstanding – diluted	26,263,585	26,260,704	26,168,682	26,152,551

(1) The sum of quarterly financial data may vary from annual data due to rounding and differences in the dilutive effect of potentially issuable shares of each reporting period.

Critical Accounting Estimates

Our consolidated financial statements have been prepared in accordance with GAAP, which require 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 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 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 included in this report.

Lease Accounting

We account for our leases under ASC 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.

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 judgement to determine key assumptions used in each valuation technique. 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 consolidated statements of operations.

We depreciate buildings and improvements and tenant 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 tenant 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 tenant improvement allowance is spent prior to installation of the tenant improvements;
- whether the lease agreement requires the tenant to provide evidence to the landlord supporting the cost and what the tenant improvement allowance was spent on prior to payment by the landlord for such tenant improvements;
- whether the tenant improvements are unique to the tenant or reusable by other tenants;
- whether the tenant is permitted to alter or remove the tenant 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 tenant 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 tenant improvements for accounting purposes using the factors discussed above, we record the cost to construct the tenant 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;

[Table of Contents](#)

- 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.

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 and selecting the discount or capitalization rate that reflects the risk inherent in future cash flow. Estimating projected cash flow is highly subjective as it requires assumptions related to future rental rates, tenant allowances, operating expenditures, property taxes, capital improvements, and occupancy levels. We are also required to make a number of assumptions relating to future economic and market events and prospective operating trends. Determining the appropriate capitalization rate also requires significant judgment and is typically based on many factors including the prevailing rate for the market or submarket, as well as the quality and location of the properties. Further, capitalization rates can fluctuate resulting from a variety of factors in the overall economy or within regional markets. If the actual net cash flow or actual market capitalization rates significantly differ from our estimates, the impairment evaluation for an individual asset could be materially affected.

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 years ended December 31, 2022 and 2021.

Stock-Based Compensation

Compensation cost for all share-based awards requires an estimate of fair value on the grant date and compensation cost is recognized on a straight-line basis over the service vesting period, which represents the requisite service period. The grant date fair value for compensation programs that contain market conditions, like modifiers based on total stockholder return (a "market condition"), are performed using complex pricing valuation models that require the input of assumptions, including judgments to estimate expected stock price volatility, expected life, and forfeiture rate. See Note 10 "Common Stock Incentive Plan" to our consolidated financial statements included in this report for further discussion the assumptions and estimates.

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.

Interest Rate Risk

As of December 31, 2022, we had \$300.0 million principal amount of Notes due 2026 and approximately \$6.4 million principal amount of Exchangeable Senior Notes outstanding at fixed interest rates, 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.

Impact of Inflation

The U.S. economy is experiencing a sustained increase in inflation rates. 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. See also the discussion under Item 1A, “Risk Factors,” under the caption “Inflation may adversely affect our business and our tenants’ financial condition and results of operations.”

Seasonality

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

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our Exchangeable Senior Notes bear interest at a fixed rate of 3.75% per annum until maturity, and our Notes due 2026 bear interest at a fixed rate of 5.50% per annum until maturity, and collectively are the only debt we have outstanding.

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 three months 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 consolidated financial statements.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The information required by this Item 8 is incorporated by reference to our Financial Statements beginning on page F-1 of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

Not applicable.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act, designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

As required by Rule 13a-15(b) and 15d-15(b) promulgated under the Exchange Act, 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 December 31, 2022. Based on that evaluation, our principal executive

[Table of Contents](#)

and financial officers concluded that our disclosure controls and procedures were not effective as of December 31, 2022 because of a material weakness in our internal control over financial reporting as described below.

A material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

Notwithstanding this material weakness, the Company has concluded that no material misstatements exist in the consolidated financial statements included in this Annual Report on Form 10-K and such financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and the results of its operations and its cash flows for the year then ended, in conformity with GAAP.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) and 15d-15(f), designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

Under the supervision and with the participation of our management, including our principal executive and principal financial officers, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in the 2013 Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. We have determined that we did not design and maintain effective internal control over financial reporting as of December 31, 2022 related to management's review and approval of requests for funding disbursements for tenant improvements at the Company's properties. Specifically, management's controls are not designed at an appropriate level of precision to prevent or detect a material misstatement in a timely manner.

Our internal control over financial reporting has been audited by BDO USA, LLP, an independent registered public accounting firm, as stated in their report appearing below, which expresses an adverse opinion on the effectiveness of our internal control over financial reporting as of December 31, 2022.

Remediation of Material Weakness

We are committed to the continuous improvement of our internal controls over financial reporting. We immediately commenced measures to remediate the identified material weakness. We have provided additional training to personnel regarding policies and procedures around construction projects and the necessary approvals of requests for funding disbursements in connection with qualifying property improvements at our properties. Our remediation efforts also include (1) enhancing the design of existing procedures and controls over the review and approval of funding requests for tenant improvements; (2) providing additional training and developing tools to implement and monitor our policies and procedures; and (3) supplementing existing resources with the engagement of third-party construction consultants.

While we believe that the efforts taken to date for remediation are appropriate and reasonable steps to remediate the material weakness, the material weakness will not be remediated until the enhanced controls have been implemented for a sufficient period of time and management has concluded, through testing and monitoring, that the new and enhanced controls are designed and operating effectively. We may conclude that additional measures, including resources, are necessary to remediate the material weakness in our internal control over financial reporting, which may necessitate additional evaluation and implementation time. We may also modify certain of the remediation efforts described above.

Changes in Internal Control Over Financial Reporting

Other than the material weakness and remediation efforts discussed above, there have been no changes in our system of internal control over financial reporting during the quarter ended December 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting

Limitations on Controls

Our system of internal control over financial reporting was designed to provide reasonable assurance regarding the preparation and fair presentation of published financial statements in accordance with accounting principles generally accepted in the United States. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance and may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
Innovative Industrial Properties, Inc.
Park City, Utah

Opinion on Internal Control over Financial Reporting

We have audited Innovative Industrial Properties, Inc.'s (the "Company's") internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). In our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on the COSO criteria. We do not express an opinion or any other form of assurance on management's statements referring to any corrective actions taken by the Company after the date of management's assessment.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) ("PCAOB"), the consolidated balance sheets of the Company as of December 31, 2022 and 2021, the related consolidated statements of income, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule (collectively referred to as the "financial statements"), and our report dated February 28, 2023 expressed an unqualified opinion thereon.

Basis for Opinion

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Item 9A, "Management's Report on Internal Control over Financial Reporting." Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit of internal control over financial reporting in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. A material weakness regarding management's failure to design and maintain controls over the review and approval of requests for funding disbursements for tenant improvements at the Company's properties has been identified and described in management's assessment. This material weakness was considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2022 financial statements, and this report does not affect our report dated February 28, 2023, on those financial statements.

Definition and Limitations of Internal Control over Financial Reporting

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

[Table of Contents](#)

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ BDO USA, LLP

San Diego, California

February 28, 2023

ITEM 9B. *OTHER INFORMATION*

Not applicable.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSEPCCTIONS

Not applicable.

PART III

ITEM 10. *DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE*

The information concerning our directors, executive officers and corporate governance required by Item 10 will be included in the Proxy Statement to be filed relating to our 2023 Annual Meeting of Stockholders and is incorporated herein by reference. Pursuant to instruction G(3) to Form 10-K, information concerning audit committee financial expert disclosure set forth under the heading “Information Regarding the Board — Committees of the Board — Audit Committee” will be included in the Proxy Statement to be filed relating to Innovative Industrial Properties, Inc.’s 2023 Annual Meeting of Stockholders and is incorporated herein by reference.

Pursuant to instruction G(3) to Form 10-K, information concerning compliance with Section 16(a) of the Exchange Act concerning our directors and executive officers set forth under the heading entitled “General — Section 16(a) Beneficial Ownership Reporting Compliance” will be included in the Proxy Statement to be filed relating to Innovative Industrial Properties, Inc.’s 2023 Annual Meeting of Stockholders and is incorporated herein by reference.

ITEM 11. *EXECUTIVE COMPENSATION*

The information concerning our executive compensation required by Item 11 will be included in the Proxy Statement to be filed relating to our 2023 Annual Meeting of Stockholders and is incorporated herein by reference.

ITEM 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS*

The information concerning the security ownership of certain beneficial owners and management, our equity compensation plans and related stockholder matters required by Item 12 will be included in the Proxy Statement to be filed relating to our 2023 Annual Meeting of Stockholders and is incorporated herein by reference.

ITEM 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE*

The information concerning certain relationships and related transactions and director independence required by Item 13 will be included in the Proxy Statement to be filed relating to our 2023 Annual Meeting of Stockholders and is incorporated herein by reference.

ITEM 14. *PRINCIPAL ACCOUNTANT FEES AND SERVICES*

The information concerning our principal accountant fees and services required by Item 14 will be included in the Proxy Statement to be filed relating to our 2023 Annual Meeting of Stockholders and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBIT AND FINANCIAL STATEMENT SCHEDULE

(a)(1) and (2) Financial Statements and Schedule:

Please refer to the Index to Consolidated Financial Statements included under Part II, Item 8, Financial Statements and Supplementary Data.

(3) Exhibits

Exhibit Number	Description of Exhibit
1.1	Form of Equity Distribution Agreement, dated as of January 20, 2023, between Innovative Industrial Properties, Inc., IIP Operating Partnership, LP and each sales agent.(1)
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).(2)
3.2	Third Amended and Restated Bylaws of Innovative Industrial Properties, Inc.(3)
4.1	Form of Certificate for Common Stock.(4)
4.2	Indenture, dated as of February 21, 2019, among IIP Operating Partnership, LP, as issuer, Innovative Industrial Properties, Inc. and the subsidiaries of IIP Operating Partnership, LP, as guarantors, TMI Trust Company, as trustee (as successor-in-interest to GLAS Trust Company LLC), and Securities Transfer Corporation, as registrar (as successor-in-interest to GLAS Trust Company LLC), including the Form of Note representing IIP Operating Partnership, LP's 3.75% Exchangeable Senior Notes due 2024.(5)
4.3	Indenture, dated as of May 25, 2021, among Innovative Industrial Properties, Inc., IIP Operating Partnership, LP, the Subsidiary Guarantors set forth on the signature page thereto, TMI Trust Company, as trustee (as successor-in-interest to GLAS Trust Company LLC), and Securities Transfer Corporation, as registrar (as successor-in-interest to GLAS Trust Company LLC), including the form of 5.50% Senior Note due 2026.(6)
4.4	Innovative Industrial Properties, Inc. Description of Securities Registered Pursuant to Section 12 of the Securities Exchange Act of 1934, as amended.(7)
10.1	Agreement of Limited Partnership of IIP Operating Partnership, LP.(8)
10.2+	2016 Omnibus Incentive Plan.(8)
10.3+	Form of Restricted Stock Award Agreement for Officers.(9)
10.4+	Form of Restricted Stock Award Agreement for Directors.(9)
10.5+	Form of Restricted Stock Unit Award Agreement.(10)
10.6+	Form of 2021 Performance Share Unit Award Agreement.(11)
10.6+	Form of 2022 Performance Share Unit Award Agreement.(12)
10.7+	Form of Indemnification Agreement between Innovative Industrial Properties, Inc. and each of its Directors and Officers.(4)
10.8+	Severance and Change of Control Agreement dated as of January 18, 2017 among Innovative Industrial Properties, Inc., IIP Operating Partnership, LP and Alan Gold.(13)
10.9+	Severance and Change of Control Agreement dated as of January 18, 2017 among Innovative Industrial Properties, Inc., IIP Operating Partnership, LP and Paul Smithers.(13)
10.10+	Severance and Change of Control Agreement dated as of January 18, 2017 among Innovative Industrial Properties, Inc., IIP Operating Partnership, LP and Brian Wolfe.(13)
10.11+	Severance and Change of Control Agreement dated as of June 7, 2017 among Innovative Industrial Properties, Inc., IIP Operating Partnership, LP and Catherine Hastings.(14)
10.12+	Director Compensation Policy.(11)
10.13+	Innovative Industrial Properties, Inc. Nonqualified Deferred Compensation Plan.(15)
10.14	Registration Rights Agreement, dated as of May 25, 2021, among Innovative Industrial Properties, Inc., IIP Operating Partnership, LP, the Subsidiary Guarantors set forth on the signature page thereto and BTIG, LLC, as representative of the initial purchasers.(6)
21.1*	List of Subsidiaries of Innovative Industrial Properties, Inc.

[Table of Contents](#)

22.1	List of Subsidiary Guarantors.(16)
23.1*	Consent of BDO USA, LLP.
31.1*	Certifications of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2*	Certifications 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.
101.INS*	XBRL Instance Document.
101.SCH*	XBRL Taxonomy Extension Schema Document.
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.
104*	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101).

* Filed herewith.

+ Indicates management contract or compensatory plan.

- (1) Incorporated by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on January 23, 2023.
- (2) Incorporated herein by reference to Innovative Industrial Properties, Inc.'s Quarterly Report on Form 10-Q filed with the SEC on August 6, 2020.
- (3) Incorporated by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on December 8, 2022.
- (4) Incorporated by reference to Innovative Industrial Properties, Inc.'s Registration Statement on Form S-11, as amended (File No. 333-214148), filed with the SEC on November 17, 2016.
- (5) Incorporated herein by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on February 21, 2019.
- (6) Incorporated herein by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on May 25, 2021.
- (7) Incorporated herein by reference to Innovative Industrial Properties, Inc.'s Annual Report on Form 10-K filed with the SEC on February 26, 2021.
- (8) Incorporated by reference to Innovative Industrial Properties, Inc.'s Registration Statement on Form S-11, as amended (File No. 333-214148), filed with the SEC on October 17, 2016.
- (9) Incorporated by reference to Innovative Industrial Properties, Inc.'s Registration Statement on Form S-8 (File No. 333-214919), filed with the SEC on December 6, 2016.
- (10) Incorporated by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on January 6, 2020.
- (11) Incorporated by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on January 15, 2021.
- (12) Incorporated by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on January 12, 2022.
- (13) Incorporated herein by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on January 24, 2017.
- (14) Incorporated herein by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on June 8, 2017.
- (15) Incorporated herein by reference to Innovative Industrial Properties, Inc.'s Current Report on Form 8-K filed with the SEC on November 18, 2019.
- (16) Incorporated by reference to Innovative Industrial Properties, Inc.'s Quarterly Report on Form 10-Q filed with the SEC on August 4, 2022.

ITEM 16. FORM 10-K SUMMARY

None.

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/ Catherine Hastings

Catherine Hastings

Chief Financial Officer and Treasurer
(Principal Financial Officer)

By: /s/ Andy Bui

Andy Bui

Vice President, Chief Accounting Officer
(Principal Accounting Officer)

Dated February 28, 2023

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons in the capacities and on the dates indicated.

<u>Name</u>	<u>Capacity</u>	<u>Date</u>
<u>/s/ Alan Gold</u> Alan Gold	Executive Chairman	February 28, 2023
<u>/s/ Gary Kreitzer</u> Gary Kreitzer	Vice Chairman	February 28, 2023
<u>/s/ Mary Curran</u> Mary Curran	Director	February 28, 2023
<u>/s/ Paul Smithers</u> Paul Smithers	President, Chief Executive Officer and Director	February 28, 2023
<u>/s/ Scott Shoemaker</u> Scott Shoemaker	Director	February 28, 2023
<u>/s/ David Stecher</u> David Stecher	Director	February 28, 2023

**INDEX TO CONSOLIDATED
FINANCIAL STATEMENTS**

Innovative Industrial Properties, Inc.

(a) Financial Statements:

Report of Independent Registered Public Accounting Firm (BDO USA, LLP; San Diego, California; PCAOB ID #243)	F-2
Consolidated Balance Sheets as of December 31, 2022 and 2021	F-4
Consolidated Statements of Income for the years ended December 31, 2022, 2021 and 2020	F-5
Consolidated Statements of Stockholders' Equity for the years ended December 31, 2022, 2021 and 2020	F-6
Consolidated Statements of Cash Flows for the years ended December 31, 2022, 2021 and 2020	F-7
Notes to Consolidated Financial Statements	F-8

(b) Financial Statement Schedule:

Schedule III – Real Estate and Accumulated Depreciation as of December 31, 2022	F-29
---	------

Report of Independent Registered Public Accounting Firm

Stockholders and Board of Directors
Innovative Industrial Properties, Inc.
Park City, Utah

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Innovative Industrial Properties, Inc. (the “Company”) as of December 31, 2022 and 2021, the related consolidated statements of income, stockholders’ equity, and cash flows for each of the three years in the period ended December 31, 2022, and the related notes and financial statement schedule listed in the accompanying index (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (“PCAOB”), the Company’s internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (“COSO”) and our report dated February 28, 2023 expressed an adverse opinion thereon.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud.

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of the critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing separate opinions on the critical audit matter or on the accounts or disclosures to which it relates.

Real Estate Acquisitions - Fair Value of Assets Acquired

As described in Note 6 to the consolidated financial statements, the Company’s consolidated real estate property acquisitions totaled approximately \$166.6 million for the year ended December 31, 2022. Certain of the 2022 property acquisitions involved significant judgments in estimating the fair values used in the allocation between the land and buildings acquired for which management obtained assistance from third-party valuation specialists.

[Table of Contents](#)

We identified the estimation of the fair values used in the allocation of land and buildings acquired for certain of the 2022 property acquisitions as a critical audit matter. The principal considerations for our determination included the limited number of recent comparable transactions. Auditing these elements involved a high degree of auditor judgment and subjectivity due to the nature and extent of audit effort required to address these matters, including the extent of specialized skill or knowledge needed.

The primary procedures we performed to address this critical audit matter included:

- Agreeing pertinent terms and conditions from executed agreements to amounts used in the valuation prepared by third-party valuation specialists for certain of the 2022 property acquisitions.
- Utilizing personnel with specialized knowledge and skills in valuation to assist in the evaluation of the reasonableness of the key valuation inputs and assumptions used in the estimation of the allocation of fair values of land and buildings acquired including the comparison to available market data.

/s/ BDO USA, LLP

We have served as the Company's auditor since 2016.

San Diego, California
February 28, 2023

Innovative Industrial Properties, Inc.

Consolidated Balance Sheets

(In thousands, except share and per share amounts)

	December 31, 2022	December 31, 2021
Assets		
Real estate, at cost:		
Land	\$ 139,953	\$ 122,386
Buildings and improvements	1,305,306	979,417
Tenant improvements	705,322	620,301
Construction in progress	54,106	—
Total real estate, at cost	2,204,687	1,722,104
Less accumulated depreciation	(138,405)	(81,938)
Net real estate held for investment	2,066,282	1,640,166
Construction loan receivable	18,021	12,916
Cash and cash equivalents	87,122	81,096
Restricted cash	1,450	5,323
Investments	200,935	324,889
Right of use office lease asset	1,739	1,068
In-place lease intangible assets, net	9,105	9,148
Other assets, net	30,182	9,996
Total assets	\$ 2,414,836	\$ 2,084,602
Liabilities and stockholders' equity		
Exchangeable Senior Notes, net	\$ 6,380	\$ 32,232
Notes due 2026, net	295,115	293,860
Tenant improvements and construction funding payable	29,376	46,274
Accounts payable and accrued expenses	10,615	7,718
Dividends payable	50,840	38,847
Rent received in advance and tenant security deposits	58,716	52,805
Other liabilities	1,901	1,167
Total liabilities	452,943	472,903
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, \$15,000 liquidation preference (\$25.00 per share), 600,000 shares issued and outstanding at December 31, 2022 and December 31, 2021	14,009	14,009
Common stock, par value \$0.001 per share, 50,000,000 shares authorized: 27,972,830 and 25,612,541 shares issued and outstanding at December 31, 2022 and December 31, 2021, respectively	28	26
Additional paid-in capital	2,065,248	1,672,882
Dividends in excess of earnings	(117,392)	(75,218)
Total stockholders' equity	1,961,893	1,611,699
Total liabilities and stockholders' equity	\$ 2,414,836	\$ 2,084,602

See the accompanying notes to the consolidated financial statements.

Innovative Industrial Properties, Inc.

Consolidated Statements of Income

(In thousands, except share and per share amounts)

	Years Ended December 31,		
	2022	2021	2020
Revenues:			
Rental (including tenant reimbursements)	\$ 274,377	\$ 204,551	\$ 116,896
Other	1,982	—	—
Total revenues	<u>276,359</u>	<u>204,551</u>	<u>116,896</u>
Expenses:			
Property expenses	10,520	4,443	4,952
General and administrative expense	38,520	22,961	14,182
Depreciation and amortization expense	61,303	41,776	28,025
Total expenses	<u>110,343</u>	<u>69,180</u>	<u>47,159</u>
Gain on sale of real estate	3,601	—	—
Income from operations	169,617	135,371	69,737
Interest and other income	3,195	397	3,424
Interest expense	(18,301)	(18,086)	(7,431)
Loss on exchange of Exchangeable Senior Notes	(125)	(3,692)	—
Net income	154,386	113,990	65,730
Preferred stock dividends	<u>(1,352)</u>	<u>(1,352)</u>	<u>(1,352)</u>
Net income attributable to common stockholders	<u>\$ 153,034</u>	<u>\$ 112,638</u>	<u>\$ 64,378</u>
Net income attributable to common stockholders per share (Note 8):			
Basic	\$ 5.57	\$ 4.69	\$ 3.28
Diluted	\$ 5.52	\$ 4.55	\$ 3.27
Weighted-average shares outstanding:			
Basic	27,345,047	23,903,017	19,443,602
Diluted	27,663,169	26,261,155	19,557,619

See accompanying notes to the consolidated financial statements.

Innovative Industrial Properties, Inc.
Consolidated Statements of Stockholders' Equity

(In thousands, except share amounts)

	Series A Preferred Stock	Shares of Common Stock	Common Stock	Additional Paid-In- Capital	Dividends in Excess of Earnings	Total Stockholders' Equity
Balance, December 31, 2019	\$ 14,009	12,637,043	\$ 13	\$ 553,932	\$ (19,944)	\$ 548,010
Net income	—	—	—	—	65,730	65,730
Exchange of Exchangeable Senior Notes	—	14	—	1	—	1
Net proceeds from sale of common stock	—	11,311,366	11	1,003,962	—	1,003,973
Preferred stock dividend	—	—	—	—	(1,352)	(1,352)
Common stock dividend	—	—	—	—	(92,554)	(92,554)
Issuance of unvested restricted stock, net of forfeitures	—	(11,495)	—	(2,166)	—	(2,166)
Stock based compensation	—	—	—	3,330	—	3,330
Balance, December 31, 2020	14,009	23,936,928	24	1,559,059	(48,120)	1,524,972
Net income	—	—	—	—	113,990	113,990
Issuance of common stock in conjunction with inducement of Exchangeable Senior Notes, net	—	1,684,237	2	108,591	—	108,593
Preferred stock dividend	—	—	—	—	(1,352)	(1,352)
Common stock dividend	—	—	—	—	(139,736)	(139,736)
Issuance of unvested restricted stock, net of forfeitures	—	(8,624)	—	(3,384)	—	(3,384)
Stock-based compensation	—	—	—	8,616	—	8,616
Balance, December 31, 2021	14,009	25,612,541	26	1,672,882	(75,218)	1,611,699
Adjustment to opening balance upon adoption of ASU 2020-06 (Note 2)	—	—	—	(1,340)	728	(612)
Net income	—	—	—	—	154,386	154,386
Exchange of Exchangeable Senior Notes	—	413,166	—	26,682	—	26,682
Net proceeds from sale of common stock	—	1,932,813	2	351,958	—	351,960
Preferred stock dividend	—	—	—	—	(1,352)	(1,352)
Common stock dividend	—	—	—	—	(195,936)	(195,936)
Issuance of unvested restricted stock, net of forfeitures	—	14,310	—	(2,441)	—	(2,441)
Stock-based compensation	—	—	—	17,507	—	17,507
Balance, December 31, 2022	\$ 14,009	27,972,830	\$ 28	\$ 2,065,248	\$ (117,392)	\$ 1,961,893

See accompanying notes to the consolidated financial statements.

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

	Years Ended December 31,		
	2022	2021	2020
Cash flows from operating activities			
Net income	\$ 154,386	\$ 113,990	\$ 65,730
Adjustments to reconcile net income to net cash provided by operating activities			
Depreciation and amortization	61,303	41,776	28,025
Loss on exchange of Exchangeable Senior Notes	125	3,692	—
Gain on sale of real estate	(3,601)	—	—
Other non-cash adjustments	185	95	162
Stock-based compensation	17,507	8,616	3,330
Amortization of discounts on short-term investments	(2,246)	(340)	(2,791)
Amortization of debt discount and issuance costs	1,349	2,851	2,040
Changes in assets and liabilities			
Other assets, net	(3,506)	(3,687)	(428)
Accounts payable, accrued expenses and other liabilities	2,717	3,102	1,224
Rent received in advance and tenant security deposits	5,911	18,652	13,522
Net cash provided by operating activities	234,130	188,747	110,814
Cash flows from investing activities			
Purchases of investments in real estate	(150,090)	(287,585)	(240,509)
Proceeds from sale of real estate asset	23,500	—	—
Funding of draws for tenant improvements and construction	(373,878)	(374,541)	(289,517)
Funding of construction loan and other investments	(21,683)	(16,068)	—
Deposits in escrow for acquisitions	(250)	(625)	(200)
Purchases of short-term investments	(388,800)	(569,772)	(1,077,867)
Maturities of short-term investments	515,000	864,498	580,978
Net cash used in investing activities	(396,201)	(384,093)	(1,027,115)
Cash flows from financing activities			
Issuance of common stock, net of offering costs	351,960	—	1,003,973
Gross proceeds from issuance of Notes due 2026	—	300,000	—
Payment of deferred financing costs from issuance of Notes due 2026	—	(6,855)	—
Payment of inducement and transaction costs relating to inducement of the Exchangeable Senior Notes	—	(1,696)	—
Dividends paid to common stockholders	(183,943)	(130,954)	(75,464)
Dividends paid to preferred stockholders	(1,352)	(1,352)	(1,352)
Taxes paid related to net share settlement of equity awards	(2,441)	(3,384)	(2,166)
Net cash provided by financing activities	164,224	155,759	924,991
Net increase (decrease) in cash, cash equivalents and restricted cash	2,153	(39,587)	8,690
Cash, cash equivalents and restricted cash, beginning of year	86,419	126,006	117,316
Cash, cash equivalents and restricted cash, end of year	\$ 88,572	\$ 86,419	\$ 126,006
Supplemental disclosure of cash flow information:			
Cash paid during the period for interest	\$ 17,247	\$ 14,381	\$ 5,391
Supplemental disclosure of non-cash investing and financing activities:			
Accrual for draws for tenant improvements and construction funding	\$ 29,376	\$ 46,274	\$ 36,500
Deposits applied for acquisitions	25	200	650
Accrual for common and preferred stock dividends declared	50,840	38,847	30,065
Exchange of Exchangeable Senior Notes for common stock	26,682	109,040	—
Operating lease liability for obtaining right of use asset	1,017	192	—

See accompanying notes to the consolidated financial statements.

Innovative Industrial Properties, Inc.

Notes to Consolidated Financial Statements

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.

Information with respect to rentable square footage is unaudited.

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

Basis of Presentation. The consolidated financial statements include all of the accounts of the Company, the Operating Partnership and all of our wholly owned subsidiaries, are presented in accordance with U.S. generally accepted accounting principles.

Variable Interest Entities. From time to time, the Company may acquire properties utilizing a reverse like-kind exchange under Section 1031 of the Internal Revenue Code (“Reverse 1031 Exchange”) in order to defer taxable gains on the subsequent sale of real estate properties. During the year ended December 31, 2022, the Company acquired four properties for a total purchase price of approximately \$82.3 million, excluding transaction costs, as part of Reverse 1031 Exchanges. The acquired properties were in the possession of limited liability companies whose legal equity interests were owned by a qualified intermediary engaged to execute the Reverse 1031 Exchanges until the Reverse 1031 Exchanges were completed or terminated. The limited liability companies were deemed to be variable interest entities (“VIEs”) for which the Company was deemed to be the primary beneficiary as the Company had the ability to direct the activities of the entity that most significantly impact its economic performance and the Company had all of the risks and rewards of ownership. As such, the VIEs, including the acquired properties, were included in the Company’s consolidated financial statements as a consolidated VIE until legal title were transferred to the Company upon the completion of the Reverse 1031 Exchanges. All VIEs relating to the four Reverse 1031 Exchanges were terminated as of December 31, 2022 and legal title to the four properties was transferred to the Company.

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 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 consolidated statements of income.

Use of Estimates. The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles 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 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

[Table of Contents](#)

made include determination of lease accounting, fair value of acquisition of real estate properties and valuation of stock-based compensation.

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 and tenant 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 the 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 the consolidated balance sheets and is amortized on a straight-line basis as a reduction of rental income over the remaining term of the applicable lease.

Sale of Real Estate. When real estate is sold, 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, pursuant to provisions of ASC 610-20, *Gains and Losses from the Derecognition of Nonfinancial Assets*.

Cost Capitalization and Depreciation. We capitalize costs associated with development and redevelopment activities and tenant 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 over estimated useful lives determined by management. We depreciate buildings and improvements and tenant improvements based on our evaluation of the estimated useful life of each specific asset, not to exceed 40 years. For the years ended December 31, 2022, 2021 and 2020, we recognized depreciation expense of approximately \$60.5 million, \$41.7 million and \$28.0 million, respectively, which are included in depreciation and amortization expense in our consolidated statements of income. We depreciate office equipment and furniture and fixtures over estimated useful lives ranging from three to seven years. We depreciate the leasehold improvements at our corporate office over the shorter of the estimated useful lives or the remaining lease term.

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 and tenant 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 and tenant improvements at historical cost of the properties as the redevelopment project or phases of projects are placed in service. During the year ended December 31, 2022, we reclassified the net carrying value of buildings and improvements and tenant improvements totaling approximately \$54.1 million to construction in progress in connection with the default by Kings Garden Inc. (“Kings Garden”) and the related litigation (see Note 11 “Commitments and Contingencies — Litigation — Kings Garden Lawsuit”).

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 years ended December 31, 2022, 2021 and 2020.

Revenue Recognition. Our leases are triple-net leases, an arrangement under which the tenant maintains the property while paying us rent. We account for our current leases as operating leases and record revenue for each of our properties 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. 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 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 consolidated financial statements.

Construction Loan. In June 2021, we executed a construction loan agreement with a developer, pursuant to which we agreed to lend up to \$18.5 million for the development of a regulated cannabis cultivation and processing facility in California. 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. As of December 31, 2022, we had funded approximately \$18.0 million of the construction loan. Interest on the construction loan was payable at the initial maturity on December 25, 2022. In December 2022, the maturity date was extended to January 25, 2023 and subsequently to December 31, 2023. See Note 12 “Subsequent Events” for more information.

Cash and Cash Equivalents. We consider all highly-liquid investments with original maturities of three months or less to be cash equivalents. As of December 31, 2022 and 2021, approximately \$78.0 million and \$72.0 million,

respectively, were invested in 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 three months.

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 obligations of the U.S. government and certificates of deposit with an original maturity at the time of purchase of greater than three months. Investments are classified as held-to-maturity and stated at amortized cost.

Exchangeable Notes. The liability and equity components of exchangeable debt instruments that may be settled in cash upon exchange, including partial cash settlement, were previously required to be separately accounted for in a manner that reflects the issuer's nonexchangeable debt borrowing rate. The initial proceeds from the sale of our Exchangeable Senior Notes (as defined below) were allocated between a liability component and an equity component in a manner that reflects interest expense at the rate of similar nonexchangeable debt that could have been issued at such time. The equity component represents the excess initial proceeds received over the fair value of the liability component of the Exchangeable Senior Notes as of the date of issuance. We measured the estimated fair value of the debt component of our Exchangeable Senior Notes as of the date of issuance based on our estimated nonexchangeable debt borrowing rate with the assistance of a third-party valuation specialist as we did not have a history of borrowing arrangements and there was limited empirical data available related to the Company's industry due to the regulatory uncertainty of the cannabis market in which the Company's tenants operate. The equity component of our Exchangeable Senior Notes was reflected within additional paid-in capital on our consolidated balance sheets, and the resulting debt discount was amortized over the period during which the Exchangeable Senior Notes were expected to be outstanding (through the maturity date) as additional non-cash interest expense.

In August 2020, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") 2020-06, Debt — Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging — Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity. ASU 2020-06 simplifies the accounting for convertible debt by eliminating the beneficial conversion and cash conversion accounting models, and convertible debt proceeds, unless issued with a substantial premium or an embedded conversion feature, will no longer be allocated between debt and equity components. ASU 2020-06 also updates the earnings per share calculation and requires entities to assume share settlement when the convertible debt can be settled in cash or shares. We adopted ASU 2020-06 on January 1, 2022 and recognized a cumulative-effect adjustment of approximately \$728,000 to the opening balance of retained earnings and derecognized approximately \$1.3 million of the remaining equity component relating to the outstanding principal balance of our Exchangeable Senior Notes at the date of adoption.

Deferred Financing Costs. The deferred financing costs that are included as a reduction in the net book value of the related liability on our consolidated balance sheets reflect issuance and other costs related to our debt obligations. These costs are amortized as non-cash interest expense using the effective interest method over the life of the related obligations.

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 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. The lease liability was initially measured based on the present value of the future lease payments discounted using the estimated incremental borrowing rate of 7.25%, which was the interest rate that we estimate we would have to pay to borrow on a collateralized basis over a similar term for an amount equal to the lease payments. In November 2021, we amended the lease to extend the term from April 2025 to January 2027 in connection with an expansion of the leased space which did not commence until February 2022. As a result of the lease amendment, we re-measured the lease liability relating to the existing lease space and measured the lease liability to the expansion space based on the present value of the respective future lease payments (excluding the extension option that we are not reasonably certain to exercise), discounted using the estimated incremental borrowing rate of 5.5%, which was the interest rate that we estimate we would have to pay to borrow on a collateralized basis over a similar term for an amount equal to the lease payments. 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 and any other consideration exchanged 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. For the years ended December 31, 2022, 2021 and 2020, we recognized office lease expense of approximately \$466,000, \$231,000 and \$229,000, respectively, which are included in general and administrative expense in our consolidated statements of income. For the years ended December 31, 2022, 2021 and 2020, amounts paid and classified as operating activities in our consolidated statements of cash flows for the office lease were approximately \$402,000, \$234,000 and \$172,000, respectively.

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 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 continued to be classified as operating leases and we continue to record revenue for each of our properties on a cash basis. Our tenant reimbursable revenue and property expenses continue to be presented on a gross basis as rental revenues and as property expenses, respectively, on our consolidated statements of income. Property taxes paid directly by the lessee to a third party continue to be excluded from our consolidated financial statements.

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.

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.

Concentration of Credit Risk. As of December 31, 2022, we owned 110 properties located in 19 states. 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.

[Table of Contents](#)

The following tables set forth the five tenants in our portfolio that represented the largest percentage of our total rental revenues for the years ended December 31, 2022, 2021 and 2020, including tenant reimbursements:

	For the Year Ended December 31, 2022	
	Number of Leases	Percentage of Rental Revenue
PharmaCann Inc. ("PharmaCann")	11	14 %
SH Parent, Inc. ("Parallel") ⁽¹⁾	4	10 %
Ascend Wellness Holdings, Inc. ("Ascend")	4	9 %
Green Thumb Industries, Inc. ("Green Thumb")	3	7 %
Trulieve Cannabis Corp. ("Trulieve")	6	7 %

	For the Year Ended December 31, 2021	
	Number of Leases	Percentage of Rental Revenue
PharmaCann	5	12 %
Parallel ⁽¹⁾	4	10 %
Ascend	3	9 %
Cresco Labs Inc. ("Cresco")	5	8 %
Kings Garden ⁽²⁾	5	8 %

	For the Year Ended December 31, 2020	
	Number of Leases	Percentage of Rental Revenue
PharmaCann	5	18 %
Ascend	3	10 %
Cresco	5	10 %
Curaleaf Holdings, Inc. ("Curaleaf")	4	7 %
Holistic Industries Inc. ("Holistic")	4	6 %

- (1) Commencing in November 2022, Parallel defaulted on its obligations to pay rent at one of our Pennsylvania properties. See Note 11 "Commitments and Contingencies — Litigation" to our consolidated financial statements for more information.
- (2) In July 2022, Kings Garden defaulted on its obligations to pay rent at all of the properties it leases with us, and pursuant to a confidential, conditional settlement agreement executed on September 11, 2022 between us and Kings Garden, we terminated the leases for two properties that were in development or redevelopment as of December 31, 2022 and regained possession of those properties. We have recovered approximately \$15.4 million of funds paid to Kings Garden. See Note 11 "Commitments and Contingencies — Litigation" to our consolidated financial statements for more information.

At December 31, 2022 and 2021, none of our properties individually represented more than 5% of our net real estate held for investment.

We have deposited cash with a financial institution that is insured by the Federal Deposit Insurance Corporation ("FDIC") up to \$250,000. As of December 31, 2022, we had cash accounts in excess of FDIC insured limits. We have not experienced any losses in such accounts.

3. Common Stock

As of December 31, 2022, the Company was authorized to issue up to 50,000,000 shares of common stock, par value \$0.001 per share, and there were 27,972,830 shares of common stock issued and outstanding.

In April 2022, we issued 1,815,790 shares of common stock in an underwritten public offering, including the exercise in full of the underwriters' option to purchase an additional 236,842 shares, resulting in net proceeds of approximately \$330.9 million.

During the year ended December 31, 2022, we sold 117,023 shares of our common stock pursuant to an "at-the-market" offering program (the "Prior ATM Program") for net proceeds of approximately \$21.1 million.

During the year ended December 31, 2022, we issued 413,166 shares of our common stock upon exchange by holders of approximately \$26.9 million of outstanding principal amount of our Exchangeable Senior Notes.

In January 2023, we terminated 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, or ATM Program, up to \$500.0 million in shares of our common stock. As of February 28, 2023, we had not sold any shares of common stock under the ATM Program.

4. Preferred Stock

As of December 31, 2022, the Company was authorized to issue up to 50,000,000 shares of preferred stock, par value \$0.001 per share, and there were issued and outstanding 600,000 shares of 9.00% Series A Cumulative Redeemable Preferred Stock, \$0.001 par value per share (the "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.

5. Dividends

The following table describes the dividends declared by the Company during the years ended December 31, 2022, 2021 and 2020:

Declaration Date	Security Class	Amount Per Share	Period Covered	Dividend Paid Date	Dividend Amount <i>(In thousands)</i>
March 13, 2020	Common stock	\$ 1.00	January 1, 2020 to March 31, 2020	April 15, 2020	\$ 17,070
March 13, 2020	Series A preferred stock	\$ 0.5625	January 15, 2020 to April 14, 2020	April 15, 2020	\$ 338
June 15, 2020	Common stock	\$ 1.06	April 1, 2020 to June 30, 2020	July 15, 2020	\$ 19,770
June 15, 2020	Series A preferred stock	\$ 0.5625	April 15, 2020 to July 14, 2020	July 15, 2020	\$ 338
September 15, 2020	Common stock	\$ 1.17	July 1, 2020 to September 30, 2020	October 15, 2020	\$ 25,987
September 15, 2020	Series A preferred stock	\$ 0.5625	July 15, 2020 to October 14, 2020	October 15, 2020	\$ 338
December 14, 2020	Common stock	\$ 1.24	October 1, 2020 to December 31, 2020	January 15, 2021	\$ 29,727
December 14, 2020	Series A preferred stock	\$ 0.5625	October 15, 2020 to January 14, 2021	January 15, 2021	\$ 338
March 15, 2021	Common stock	\$ 1.32	January 1, 2021 to March 31, 2021	April 15, 2021	\$ 31,660
March 15, 2021	Series A preferred stock	\$ 0.5625	January 15, 2021 to April 14, 2021	April 15, 2021	\$ 338
June 15, 2021	Common stock	\$ 1.40	April 1, 2021 to June 30, 2021	July 15, 2021	\$ 33,584
June 15, 2021	Series A preferred stock	\$ 0.5625	April 15, 2021 to July 14, 2021	July 15, 2021	\$ 338
September 15, 2021	Common stock	\$ 1.50	July 1, 2021 to September 30, 2021	October 15, 2021	\$ 35,983
September 15, 2021	Series A preferred stock	\$ 0.5625	July 15, 2021 to October 14, 2021	October 15, 2021	\$ 338
December 15, 2021	Common stock	\$ 1.50	October 1, 2021 to December 31, 2021	January 14, 2022	\$ 38,509
December 15, 2021	Series A preferred stock	\$ 0.5625	October 15, 2021 to January 14, 2022	January 14, 2022	\$ 338
March 14, 2022	Common stock	\$ 1.75	January 1, 2022 to March 31, 2022	April 14, 2022	\$ 45,830
March 14, 2022	Series A preferred stock	\$ 0.5625	January 15, 2022 to April 14, 2022	April 14, 2022	\$ 338
June 15, 2022	Common stock	\$ 1.75	April 1, 2022 to June 30, 2022	July 15, 2022	\$ 49,101
June 15, 2022	Series A preferred stock	\$ 0.5625	April 15, 2022 to July 14, 2022	July 15, 2022	\$ 338
September 15, 2022	Common stock	\$ 1.80	July 1, 2022 to September 30, 2022	October 14, 2022	\$ 50,503
September 15, 2022	Series A preferred stock	\$ 0.5625	July 15, 2022 to October 14, 2022	October 14, 2022	\$ 338
December 15, 2022	Common stock	\$ 1.80	October 1, 2022 to December 31, 2022	January 13, 2023	\$ 50,502
December 15, 2022	Series A preferred stock	\$ 0.5625	October 15, 2022 to January 14, 2023	January 13, 2023	\$ 338

6. Investments in Real Estate

Acquisitions

The Company made the following acquisitions during the year ended December 31, 2022 (dollars in thousands):

Property	Market	Closing Date	Rentable Square Feet ⁽¹⁾	Initial Purchase Price	Transaction Costs	Total
Everett Street	Massachusetts	January 28, 2022	57,000	\$ 16,000	\$ 20	\$ 16,020 ⁽²⁾
Munsonhurst Road	New Jersey	February 10, 2022	114,000	35,400	8	35,408 ⁽³⁾
South 17th Street	Pennsylvania	March 23, 2022	3,000	2,750	68	2,818
Perez Road	California	March 25, 2022	23,000	8,158	11	8,169 ⁽⁴⁾
Western Maryland Parkway	Maryland	April 13, 2022	84,000	25,000	290	25,290
East Cherry Street	Arizona	April 27, 2022	17,000	5,238	11	5,249
Mozzone Boulevard	Massachusetts	May 16, 2022	104,000	40,000	32	40,032
FM 969	Texas	June 14, 2022	85,000	12,040	25	12,065 ⁽⁵⁾
Worcester Road	Massachusetts	September 1, 2022	104,000	21,500	25	21,525 ⁽⁶⁾
Total			<u>591,000</u>	<u>\$ 166,086</u>	<u>\$ 490</u>	<u>\$ 166,576 ⁽⁷⁾</u>

- (1) Includes expected rentable square feet at completion of construction of certain properties.
- (2) The acquisition of the property did not satisfy the requirements for sale-leaseback accounting and therefore, the transaction is recognized as a note receivable and is included in other assets, net on our consolidated balance sheet.
- (3) The tenant is expected to complete improvements at the property, for which we agreed to provide funding of up to \$4.6 million.
- (4) The purchase price includes \$1.8 million holdback held in an escrow account, which is subject to distribution to the seller upon seller's completion of certain improvements at the property. As of December 31, 2022, we have distributed approximately \$1.4 million of the holdback. The remaining approximately \$400,000 is included in restricted cash on our consolidated balance sheet.
- (5) The tenant is expected to complete improvements at the property, for which we agreed to provide funding of up to approximately \$10.0 million. The purchase price includes approximately \$908,000 attributable to the property which did not satisfy the requirements for sale-leaseback accounting; therefore, this amount is recognized as a note receivable and is included in other assets, net on our consolidated balance sheet.
- (6) The purchase price includes approximately \$1.0 million held in an escrow account, which is subject to distribution to the seller upon seller's completion of certain improvements at the property and is included in restricted cash on our consolidated balance sheet.
- (7) Approximately \$16.9 million of financing note receivables were included in other assets; \$2.8 million was included in restricted cash; approximately \$14.5 million was allocated to land; approximately \$131.5 million was allocated to building and improvements; and approximately \$798,000 was allocated to in-place leases.

Acquired In-Place Lease Intangible Assets

In-place lease intangible assets and related accumulated amortization as of December 31, 2022 and 2021 is as follows (in thousands):

	December 31, 2022	December 31, 2021
In-place lease intangible assets	\$ 9,979	\$ 9,181
Accumulated amortization	(874)	(33)
In-place lease intangible assets, net	<u>\$ 9,105</u>	<u>\$ 9,148</u>

Amortization of in-place lease intangible assets classified in depreciation and amortization expense in our consolidated statements of income was approximately \$841,000 and \$33,000 for the years ended December 31, 2022 and 2021, respectively. The remaining weighted-average amortization period of the value of acquired in-place leases was approximately 10.6 years, and the estimated annual amortization of the value of the acquired in-place leases as of December 31, 2022 is as follows (in thousands):

[Table of Contents](#)

Year	Amount
2023	\$ 860
2024	860
2025	860
2026	860
2027	860
Thereafter	4,805
Total	\$ 9,105

Above-Market Lease

The above-market lease and related accumulated amortization included in other assets, net on our consolidated balance sheets as of December 31, 2022 and 2021 is as follows (in thousands):

	December 31, 2022	December 31, 2021
Above-market lease	\$ 1,054	\$ 1,054
Accumulated amortization	(95)	(4)
Above-market lease, net	<u>\$ 959</u>	<u>\$ 1,050</u>

The above-market lease is amortized on a straight-line basis as a reduction to rental revenues over the remaining lease term of approximately 10.3 years. For the years ended December 31, 2022 and 2021, the amortization of the above-market lease was approximately \$91,000 and \$4,000, respectively.

Additional Improvement Allowances

In February 2022, we amended our lease with Green Peak Industries, Inc. (“Green Peak”) at one of our Michigan properties, increasing the improvement allowance under the lease by \$18.0 million to a total of approximately \$47.5 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In March 2022, we amended our lease with Holistic at one of our Michigan properties, increasing the improvement allowance under the lease by \$3.5 million to a total of \$22.3 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In March 2022, we amended our lease with a subsidiary of Ascend at one of our Michigan properties, increasing the improvement allowance under the lease by \$4.4 million to a total of \$19.4 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In March 2022, we amended our lease with a subsidiary of Ascend at one of our Massachusetts properties, increasing the improvement allowance under the lease by \$14.9 million to a total of approximately \$37.2 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In April 2022, we amended our lease and development agreement with PharmaCann at one of our New York properties, increasing the construction fund by \$45.0 million to a total of approximately \$78.5 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In June 2022, we amended our lease with a subsidiary of Curaleaf at one of our Illinois properties, increasing the improvement allowance under the lease by approximately \$10.9 million to a total of \$29.5 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In June 2022, we amended our lease with Sozo Health, Inc. (“Sozo”) at one of our Michigan properties, increasing the improvement allowance by approximately \$1.2 million to a total of approximately \$7.0 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In June 2022, we amended our lease with a subsidiary of Curaleaf at one of our Pennsylvania properties, increasing the improvement allowance by \$35.0 million to a total of approximately \$47.4 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

[Table of Contents](#)

In June 2022, we amended our lease with a subsidiary of Green Thumb at one of our Pennsylvania properties, increasing the improvement allowance by \$55.0 million to a total \$74.3 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In October 2022, we amended our lease with Holistic at one of our Massachusetts properties, increasing the improvement allowance under the lease by \$2.0 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In November 2022, we amended our lease with a subsidiary of 4Front Ventures Corp. (“4Front”) at one of our Illinois properties, increasing the improvement allowance under the lease by \$19.9 million, which resulted in a corresponding adjustment to the base rent for the lease at the property.

In November 2022, we amended our lease with Gold Flora, LLC at one of our California properties, increasing the improvement allowance under the lease by \$3.5 million, which resulted in a corresponding adjustment to the base rent for the lease at the property.

Including all of our properties, during the year ended December 31, 2022, we capitalized costs of approximately \$355.6 million and funded approximately \$373.9 million relating to improvements and construction activities at our properties.

Future contractual minimum rent (including base rent and property management fees) under the operating leases as of December 31, 2022 for future periods is summarized as follows (in thousands):

Year	Contractual Minimum Rent
2023	\$ 287,050
2024	296,006
2025	304,794
2026	313,877
2027	323,234
Thereafter	4,147,777
Total	\$ 5,672,738

Property Disposition

In November 2022, we sold one of our Pennsylvania properties that was leased to a subsidiary of Maitri Holdings, LLC for \$23.5 million, excluding transaction costs, and recognized a gain on sale of the property of approximately \$3.6 million.

7. Debt

Exchangeable Senior Notes

As of December 31, 2022 and 2021, our Operating Partnership had outstanding approximately \$6.4 million and \$33.4 million, respectively, principal amount of 3.75% Exchangeable Senior Notes due 2024 (the “Exchangeable Senior Notes”). The Exchangeable Senior Notes are senior unsecured obligations of our Operating Partnership, are fully and unconditionally guaranteed by us and our Operating Partnership’s subsidiaries and are exchangeable for cash, shares of our common stock, or a combination of cash and shares of our common stock, at our Operating Partnership’s option, at any time prior to the close of business on the second scheduled trading day immediately preceding the stated maturity date. The exchange rate for the Exchangeable Senior Notes at December 31, 2022 was 16.10097 shares of our common stock per \$1,000 principal amount of the Exchangeable Senior Notes and the exchange price at December 31, 2022 was approximately \$62.11 per share of our common stock. The exchange rate and exchange price are subject to adjustment in certain circumstances. The Exchangeable Senior Notes will pay interest semiannually at a rate of 3.75% per annum and will mature on February 21, 2024, unless earlier exchanged or repurchased in accordance with their terms. Our Operating Partnership will not have the right to redeem the Exchangeable Senior Notes prior to maturity, but may be required to repurchase the Exchangeable Senior Notes from holders under certain circumstances. At December 31, 2022, the if-exchanged value of the Exchangeable Senior Notes exceeded the principal amount by approximately \$4.1 million.

[Table of Contents](#)

In connection with the issuance of the Exchangeable Senior Notes in February 2019, we recorded an approximately \$5.8 million discount based on the implied value of the exchange option and an assumed effective interest rate of 4.65%, as well as approximately \$5.2 million of initial issuance costs, of which approximately \$5.0 million and \$200,000 were allocated to the liability and equity components, respectively, based on their relative fair values. Issuance costs allocated to the liability component as well as the debt discount, are being amortized using the effective interest method and recognized as non-cash interest expense over the expected term of the Exchangeable Senior Notes.

During the year ended December 31, 2022, we issued 413,166 shares of our common stock upon exchanges by holders of approximately \$26.9 million of outstanding principal amount of our Exchangeable Senior Notes. For the year ended December 31, 2022, we recognized a loss on the exchange totaling approximately \$125,000 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 non-cash increase to our additional paid-in capital account of approximately \$26.7 million for the year ended December 31, 2022.

In December 2021, our Operating Partnership entered into separate privately-negotiated exchange agreements with certain holders of the Exchangeable Senior Notes, pursuant to which the Operating Partnership delivered and paid an aggregate of (a) 1,684,237 shares of the Company's common stock and (b) approximately \$2.3 million in cash (consisting of approximately \$1.2 million in accrued interest and approximately \$1.1 million in inducement), collectively, in exchange for approximately \$110.4 million principal amount of the Exchangeable Senior Notes (the "Exchange Transactions"). The issuance of the shares pursuant to the Exchange Transactions resulted in a non-cash increase to our additional paid-in capital account of approximately \$109.0 million, primarily driven by the fair value of the shares issued, partially offset by the amount allocated to the repurchase of the exchange option. In connection with the Exchange Transactions, we recognized a loss on induced exchange of Exchangeable Senior Notes of approximately \$3.7 million.

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

	For the Year Ended December 31,		
	2022	2021	2020
Cash coupon	\$ 452	\$ 5,380	\$ 5,391
Amortization of debt discount	—	1,146	1,093
Amortization of issuance cost	94	991	947
Total interest expense	<u>\$ 546</u>	<u>\$ 7,517</u>	<u>\$ 7,431</u>

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

	December 31, 2022	December 31, 2021
Principal amount	\$ 6,436	\$ 33,373
Unamortized discount	—	(612)
Unamortized issuance cost	(56)	(529)
Carrying value	<u>\$ 6,380</u>	<u>\$ 32,232</u>

Accrued interest payable for the Exchangeable Senior Notes was approximately \$70,000 and \$365,000 as of December 31, 2022 and 2021, respectively, and is included in accounts payable and accrued expenses on our consolidated balance sheets.

Notes due 2026

On May 25, 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 our Operating Partnership's subsidiaries and rank equally in right of payment with all of the Operating Partnership's existing and future senior unsecured indebtedness, including the Exchangeable Senior Notes. 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 beginning on November 15, 2021, until the stated maturity date of May 25, 2026. The terms of the

[Table of Contents](#)

Notes due 2026 are governed by an indenture, dated May 25, 2021, among the Operating Partnership, as issuer, the Company and the Operating Partnership's subsidiaries, as guarantors, TMI Trust Company, as trustee (as successor-in-interest to GLAS Trust Company LLC), and Securities Transfer Corporation, as registrar (as successor-in-interest to GLAS Trust Company LLC). 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 connection with the issuance of the Notes due 2026, we recorded approximately \$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 following table details our interest expense related to the Notes due 2026 (in thousands):

	For the Year Ended December 31,	
	2022	2021
Cash coupon	\$ 16,500	\$ 9,854
Amortization of issuance cost	1,255	715
Total interest expense	<u>\$ 17,755</u>	<u>\$ 10,569</u>

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

	December 31, 2022	December 31, 2021
Principal amount	\$ 300,000	\$ 300,000
Unamortized issuance cost	(4,885)	(6,140)
Carrying value	<u>\$ 295,115</u>	<u>\$ 293,860</u>

The Operating Partnership may redeem some or all of the notes at its option at any time at the applicable redemption price. If the notes are redeemed prior to February 25, 2026, the redemption price will be equal to 100% of the principal amount of the notes being redeemed, plus a make-whole premium and accrued and unpaid interest thereon to, but excluding, the applicable redemption date. If the notes are redeemed on or after February 25, 2026, the redemption price will be equal to 100% of the principal amount of the notes 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 December 31, 2022.

Accrued interest payable for the Notes due 2026 as of December 31, 2022 and 2021 was approximately \$2.1 million and is included in accounts payable and accrued expenses on our consolidated balance sheets.

The following table summarizes the principal payments on our outstanding indebtedness as of December 31, 2022 (in thousands):

	Payments Due by Year	Amount
2023	\$	—
2024		6,436
2025		—
2026		300,000
2027		—
Thereafter		—
Total	<u>\$</u>	<u>306,436</u>

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 and dividend equivalents 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 December 31, 2022, all of the Company’s participating securities received dividends or dividend equivalents at an equal dividend rate per share. As a result, distributions to participating securities have been included in net income attributable to common stockholders to calculate net income per basic and diluted share.

The 202,076 shares and 2,180,550 shares necessary to settle the Exchangeable Senior Notes on the if-exchanged method basis were dilutive for the years ended December 31, 2022 and 2021, respectively, and were included in the computation of diluted earnings per share. The 2,158,837 potentially issuable shares necessary to settle the Exchangeable Senior Notes on the if-exchanged method basis were anti-dilutive for the year ended December 31, 2020 and were excluded from the computation of diluted earnings per share.

For the year ended December 31, 2022, the performance share units (“PSUs”) granted to certain employees were not included in dilutive securities as the performance thresholds for the vesting of the PSUs were not met as measured as of December 31, 2022. For the year ended December 31, 2021, 81,414 shares issuable upon vesting of PSUs granted to certain employees in January 2021 were included in dilutive securities, as the performance thresholds for vesting of these PSUs were met as measured as of December 31, 2021 (see Note 10 for further discussion of the PSUs).

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

	Years Ended December 31,		
	2022	2021	2020
Net income	\$ 154,386	\$ 113,990	\$ 65,730
Preferred stock dividends	(1,352)	(1,352)	(1,352)
Distribution to participating securities	(834)	(557)	(509)
Net income attributable to common stockholders used to compute net income per share - basic	152,200	112,081	63,869
Dilutive effect of Exchangeable Senior Notes	546	7,517	—
Net income attributable to common stockholders used to compute net income per share - diluted	\$ 152,746	\$ 119,598	\$ 63,869
Weighted-average common shares outstanding:			
Basic	27,345,047	23,903,017	19,443,602
Restricted stock and RSUs	116,046	96,174	114,017
PSUs	—	81,414	—
Dilutive effect of Exchangeable Senior Notes	202,076	2,180,550	—
Diluted	27,663,169	26,261,155	19,557,619
Net income attributable to common stockholders per share:			
Basic	\$ 5.57	\$ 4.69	\$ 3.28
Diluted	\$ 5.52	\$ 4.55	\$ 3.27

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 December 31, 2022 and 2021 (in thousands):

	At December 31, 2022		At December 31, 2021	
	Carrying Value	Fair Value	Carrying Value	Fair Value
Investments ⁽¹⁾	\$ 200,935	\$ 200,715	\$ 324,889	\$ 324,772
Exchangeable Senior Notes ⁽²⁾	\$ 6,380	\$ 10,282	\$ 32,232	\$ 134,270
Notes due 2026 ⁽²⁾	\$ 295,115	\$ 264,234	\$ 293,860	\$ 318,486

(1) Investments consisting of obligations of the U.S. government with an original maturity at the time of purchase of greater than three months are classified as held-to-maturity and valued using Level 1 inputs.

(2) The fair value is determined based upon Level 2 inputs as the Exchangeable Senior Notes and Notes due 2026 were trading in the private market.

As of December 31, 2022 and 2021, cash equivalent instruments consisted of approximately \$78.0 million and \$72.0 million, respectively, in short-term money market funds that were measured using the net asset value per share that have not been classified using the fair value hierarchy. The fund invests primarily in short-term U.S. Treasury and government securities. Short-term investments consisting of certificate of deposits and obligations of the U.S. government are stated at amortized cost, which approximates their fair values due to the short-term maturities and market rates of interest of these instruments.

The carrying amounts of financial instruments such as cash equivalents invested in certificates of deposit, obligations of the U.S. government with an original maturity at the time of purchase of less than or equal to three months, construction loan receivable, accounts payable, accrued expenses and other liabilities approximate fair values due to the short-term maturities and market rates of interest of these instruments.

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 withholding 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.

[Table of Contents](#)

A summary of the restricted stock activity under the 2016 Plan and related information for the years ended December 31, 2022, 2021 and 2020 is included in the table below:

	Restricted Shares	Weighted- Average Grant Date Fair Value
Nonvested balance at December 31, 2019	139,546	\$ 37.03
Granted	17,057	\$ 75.96
Vested	(51,705)	\$ 40.07
Forfeited ⁽¹⁾	(28,552)	\$ 19.72
Nonvested balance at December 31, 2020	76,346	\$ 50.14
Granted	9,679	\$ 187.74
Vested	(29,955)	\$ 52.31
Forfeited ⁽¹⁾	(18,303)	\$ 31.99
Nonvested balance at December 31, 2021	37,767	\$ 92.49
Granted	24,456	\$ 205.62
Vested	(18,051)	\$ 91.57
Forfeited ⁽¹⁾	(10,146)	\$ 69.74
Nonvested balance at December 31, 2022	34,026	\$ 181.08

(1) All of these shares were forfeited to cover the employees' tax withholding obligation upon vesting.

The remaining unrecognized compensation cost of approximately \$3.6 million for restricted stock awards is expected to be recognized over a weighted-average amortization period of approximately 1.8 years as of December 31, 2022. The fair value of restricted stock that vested in 2022, 2021 and 2020 was approximately \$6.9 million, \$8.8 million and \$6.0 million, respectively.

The following table summarizes our RSU activity for the years ended December 31, 2022, 2021 and 2020. 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:

	Unvested RSUs	Weighted- Average Grant Date Fair Value
Balance at December 31, 2019	—	\$ —
Granted	36,687	\$ 76.06
Balance at December 31, 2020	36,687	\$ 76.06
Granted	23,639	\$ 188.80
Balance at December 31, 2021	60,326	\$ 120.24
Granted	23,351	\$ 206.45
Balance at December 31, 2022	83,677	\$ 144.30

The remaining unrecognized compensation cost of approximately \$4.5 million for RSU awards is expected to be recognized over an amortization period of approximately 1.7 years as of December 31, 2022.

In January 2021, we initiated the PSU program and issued 70,795 "target" PSUs to a select group of officers, which vest and are settled in shares of common stock ("Award Shares") based on the Company's total stockholder return over a period commencing on January 11, 2021 and ending on December 31, 2023 (the "Performance Period") relative to two different comparator groups of companies. In January 2022, we issued 102,641 "target" PSUs to a select group of officers, which vest and are settled in shares of common stock (referred to herein together with the 2021 PSU Award Shares as the "Award Shares") based on the Company's total stockholder return over a period commencing on January

[Table of Contents](#)

11, 2022 and ending on December 31, 2024 (referred to herein together with the 2021 PSU Performance Period as the “Performance Periods”) relative to two different comparator groups of companies.

At the end of the applicable Performance Periods, a recipient of PSUs may receive as few as zero Award Shares or as many as 150% of the number of target PSUs in Award Shares, plus deemed dividends. PSUs will also be reduced as necessary so the total value at the vesting date does not exceed 800% of the grant date PSU price, and if the Company’s absolute total stockholder return during the applicable Performance Period is negative, the payout of Award Shares is capped at the target number of PSUs, notwithstanding the Company’s outperformance of comparator groups. No dividends are paid to the recipient during the applicable Performance Periods. At the end of the applicable Performance Periods, if the Company’s total stockholder return is such that the recipient earns Award Shares, the recipient will receive additional shares of common stock relating to dividends deemed to have been paid and reinvested on the Award Shares. The recipient of the Award Shares may not sell, transfer or otherwise dispose of the Award Shares for a one-year period following the vesting date of the Award Shares.

The grant date fair value of the PSUs granted in January 2021 and January 2022 was \$12.0 million and \$20.0 million, respectively. The fair value was calculated using a Monte Carlo simulation pricing model based on the following assumptions:

	2021 PSU Award Fair Value Assumptions	2022 PSU Award Fair Value Assumptions
Valuation date	January 6, 2021	January 7, 2022
Fair value per share on valuation date	\$169.51	\$194.86
Expected term	3 years	3 years
Expected price volatility	57.64%	55.99%
Risk-free interest rate	0.20%	1.17%
Discount for post vesting restriction	12.44%	12.22%

The expected share price volatility was based on the historical volatility of our shares of common stock over a period of approximately the applicable Performance Periods. The risk-free interest rate was based on the zero-coupon risk-free interest rate derived from the Treasury Constant Maturities yield curve on the valuation date. The discount for the post vesting restriction was estimated using the Finnerty model.

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 Periods. For the years ended December 31, 2022 and 2021, we recognized stock-based compensation expense of approximately \$10.7 million and \$4.0 million, respectively, relating to the PSU awards. As of December 31, 2022, the remaining unrecognized compensation cost of approximately \$17.3 million relating to PSU awards is expected to be recognized over the remaining Performance Period of approximately 1.8 years.

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 consolidated balance sheet as of December 31, 2022 is presented in the table below (in thousands):

Year	Amount
2023	\$ 496
2024	511
2025	526
2026	543
2027	45
Total future contractual lease payments	2,121
Effect of discounting	(245)
Office lease liability	<u>\$ 1,876</u>

Improvement Allowances. As of December 31, 2022, we had approximately \$96.6 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 Loan. As of December 31, 2022, we had approximately \$479,000 of commitments related to our construction loan for the development of a regulated cannabis cultivation and processing facility in California. See Note 12 “Subsequent Events” for more information.

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. Malozzi, 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, Tracie J. Hager, 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 January 25, 2023, plaintiff responded to defendants’ motion to dismiss the Amended Class Action Complaint. 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 consolidated financial statements.

Derivative Action Lawsuit

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.*, 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 Drover, 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

[Table of Contents](#)

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 16, 2022, along with a stay in the lawsuit pending a ruling on the defendants' motion to dismiss the federal class action lawsuit described above. The Company intends to vigorously defend these consolidated lawsuits. However, at this time, the Company cannot predict the probable outcome of this action, and, accordingly, no amounts have been accrued in the Company's consolidated financial statements.

Kings Garden Lawsuit

In July 2022, one of our tenants, Kings Garden Inc., defaulted on its obligations to pay base rent and property management fees under each of its six leases with our indirect, wholly owned subsidiary, IIP-CA 2 LP, and defaulted on its obligations to reimburse us for certain insurance premiums at the properties incurred by us that are payable by Kings Garden as operating expenses under such leases. For the year ended December 31, 2022, Kings Garden's monetary defaults under its leases with us were approximately \$7.3 million in the aggregate, consisting of approximately \$6.6 million of contractual base rents and property management fees and approximately \$671,000 of insurance premiums and property taxes, but excluding applicable late charges and default interest. Of that total monetary default, approximately \$4.5 million pertained to the 19th Avenue lease, which includes both an operational building and construction in progress. We applied a portion of the security deposits under the leases, totaling approximately \$2.7 million, as payments for these amounts.

On July 25, 2022, IIP-CA 2 LP filed a lawsuit against Kings Garden. The case was named *IIP-CA 2 LP, a Delaware limited partnership v. Kings Garden Inc., a Nevada corporation, CK Endeavors, Inc., a California corporation, and JM Endeavors, Inc., a California corporation*, and was filed in the Superior Court of the State of California. The lawsuit asserts claims for breach of contract, declaratory relief, and injunctive relief. On August 2, 2022, the case was amended to be named *IIP-CA 2 LP, a Delaware limited partnership v. Kings Garden Inc., a Nevada corporation, CK Endeavors, Inc., a California corporation, JM Endeavors, Inc., a California corporation, Michael King, an individual, Gary LaSalle, an individual, Charles Kieley, an individual, and Laurie Kibby, an individual*, and to include claims relating to construction at the expansion project and the property that was under redevelopment as of June 30, 2022 for breach of implied covenant of good faith and fair dealing, fraud, negligent misrepresentation, conversion, theft by false pretenses, money had and received, and violations of the Racketeer Influenced and Corrupt Organization Act (18 U.S.C. Section 1962(c)). The amount related to these project costs reported in construction in progress as of December 31, 2022 was approximately \$33.2 million. The amount related to these project costs reported in buildings and improvements and tenant improvements was approximately \$11.5 million in the aggregate as of December 31, 2021.

On September 11, 2022, the parties to the lawsuit entered into a confidential, conditional settlement agreement pertaining to matters related to the lawsuit. Pursuant to the conditional settlement agreement, as of December 31, 2022, the Company received a total of \$15.4 million in partial settlement payments from Kings Garden, which was accounted for as a reduction to construction in progress on our consolidated balance sheets. Of the six properties previously leased to Kings Garden, four were operational, with an expansion project at one of those properties, and the other two properties were in development or redevelopment as of December 31, 2022. In connection with the conditional settlement agreement, the Company terminated leases and regained possession of the two properties that were in development or redevelopment as of December 31, 2022.

Out of the amounts included in construction in progress at December 31, 2022, we are in the process of investigating additional costs paid of approximately \$9.8 million to determine whether these are potential overpayments. Although there is at least a reasonable possibility that a loss may have been incurred in connection with the default by Kings Garden and the related construction projects, as of December 31, 2022, we are unable to make such an estimate.

On February 14, 2023, Kings Garden filed an Arbitration Demand related to the interpretation of the confidential, conditional settlement agreement between the parties that concerns certain terms governing (along with the relevant lease) the assignment of one of the Kings Garden leases.

Parallel Pennsylvania Litigation

Subsequent to December 31, 2022, on February 6, 2023, IIP-PA 8 LLC, as landlord and an indirect subsidiary of the Company, filed a lawsuit against Goodblend Pennsylvania LLC, as tenant, and Parallel, as guarantor, in the Court of Common Pleas of Allegheny County, Pennsylvania, regarding the lease and related guaranty for one of the Company's

properties located in Pennsylvania. The lawsuit asserts claims for breach of contract by the tenant and guarantor and possession.

Parallel Texas Litigation

Subsequent to December 31, 2022, on February 11, 2023, a subsidiary of Parallel defaulted on its obligations to pay rent under the lease at one of our properties in Texas that is under development. On February 23, 2023, IIP-TX 1 LLC, as landlord and an indirect subsidiary of the Company, filed a lawsuit against Surterra San Marcos, LLC, as tenant, in the Justice Court of Hays County, Texas, regarding the lease, asserting claim for possession.

Green Peak Michigan Litigation

Subsequent to December 31, 2022, on February 2, 2023, IIP-MI 1 LLC, as landlord and an indirect subsidiary of the Company, filed a lawsuit against Green Peak, as tenant, in 56-A District Court of the State of Michigan, regarding the lease for one of the Company's properties located in Michigan, asserting claim for possession. On February 22, 2023, IIP-MI 1 LLC filed a subsequent lawsuit against Green Peak and Tropics LP ("SAF") in the 56th Circuit Court of the State of Michigan, regarding the same lease, asserting claims against Green Peak for breach of contract, unjust enrichment, and innocent misrepresentation, against SAF for tortious interference with contract, and against both Green Peak and SAF for civil conspiracy.

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.

Deferred Compensation Plan. In November 2019, we adopted the Innovative Industrial Properties, Inc. Nonqualified Deferred Compensation Plan (the "Plan"), which allows a select group of management and non-employee directors to defer receipt of their compensation, including up to 80% of base salary, 100% of bonus, 100% of director fees and 100% of restricted equity awards. The Plan assets are held in a rabbi trust which is consolidated and included in the consolidated financial statements.

12. Subsequent Events

ATM Program

In January 2023, we terminated the Prior ATM Program and entered into new equity distribution agreements for the ATM Program, pursuant to which we may offer and sell from time to time up to \$500.0 million of shares of our common stock. As of February 28, 2023, we had not issued any shares of common stock under this ATM Program.

Acquisition

In February 2023, we acquired a 58,000 square foot operational cannabis cultivation facility in Pennsylvania for \$15.0 million (excluding transaction costs) and executed a lease with a subsidiary of TILT Holdings Inc. for the entire property.

Lease Amendments

In February 2023, we amended our lease with a subsidiary of Ascend at one of our New Jersey properties, increasing the improvement allowance under the lease by \$15.0 million to a total of approximately \$19.6 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In February 2023, we amended our lease and development agreement with PharmaCann at one of our New York properties, increasing the construction fund by \$15.0 million to a total of approximately \$93.5 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

[Table of Contents](#)

In February 2023, we amended our lease with a subsidiary of Goodness Growth Holdings Inc. at one of our New York properties, increasing the improvement allowance under the lease by \$4.0 million to a total of approximately \$53.4 million, which also resulted in a corresponding adjustment to the base rent for the lease at the property.

In January 2023, we entered into lease amendments with Holistic at our properties located in California, Maryland, Massachusetts, Michigan and Pennsylvania, which (1) included cross-default provisions applicable to each lease; (2) extended the term of each lease; and (3) provided that 100% of the base rent shall be applied from the security deposits held by us for (a) the nine months ending September 30, 2023 with respect to the Michigan property and (b) the eight months ending September 30, 2023 with respect to the California property, with pro rata monthly payback of the security deposits over the twelve month period starting January 2024.

In January 2023, we executed a lease amendment with Calyx Peak, Inc. at our Missouri property, which (1) extended the term of the lease; and (2) provided for 100% base rent deferral through March 31, 2023, with pro rata monthly payback of the deferred rent over the twelve month period starting April 2023.

Construction Loan Amendment

In February 2023, we amended the construction loan for the development of a regulated cannabis cultivation and processing facility in California, for which we are the lender, to provide for, among other things: (1) the additional capital commitment of the borrower into the project of \$1.0 million; (2) our agreement to fund an additional \$4.5 million into the project; (3) an increase in the interest rate commencing effective April 1, 2023; (4) an extension of the loan term to December 31, 2023; and (5) the provision of additional collateral from the borrower for the loan. Interest on the loan continues to accrue through March 31, 2023 with monthly payment of interest commencing April 1, 2023.

Pending Disposition

In February 2023, we executed definitive agreements to sell the portfolio of properties in California leased to affiliates of Medical Investor Holdings, LLC (“Vertical”) for \$16.2 million (excluding transaction costs) with a secured loan for that amount with the buyer of the property. The transaction is subject to continued diligence and customary closing conditions, and there can be no assurance that the transaction will be completed on the terms described above, or at all.

Lease Defaults

In January 2023, we delivered notices of default to Parallel for defaulting on its obligations to pay rent at one of our properties in Pennsylvania, and to Green Peak for defaulting on its obligations to pay rent at one of our properties in Michigan. In February 2023, we delivered a notice of default to Parallel for defaulting on its obligations to pay rent at one of our Texas properties. See Note 11 “Commitments and Contingencies — Litigation” for more information.

Table of Contents

INNOVATIVE INDUSTRIAL PROPERTIES, INC.
SCHEDULE III - REAL ESTATE AND ACCUMULATED DEPRECIATION
As of December 31, 2022
(In thousands)

Property	Property Type ⁽¹⁾	State	Year Built/Renovated	Initial Costs		Costs Capitalized Subsequent to Acquisition	Total Costs			Accumulated Depreciation	Net Cost Basis	Year Acquired
				Land	Building and Improvements		Land	Building and Improvements	Total			
East Cherry Street	Industrial	Arizona	1971 / 2016	\$ 723	\$ 3,995	\$ —	\$ 723	\$ 3,995	\$ 4,718	\$ (70)	\$ 4,648	2022
West Greenhouse Drive	Industrial	Arizona	1995 / 2017	398	14,629	5,003	398	19,632	20,030	(3,544)	16,486	2017
64125 19th Avenue	Industrial	California	2019/ (2)	5,930	45,081	11,509	5,930	56,590	62,520	(1,648)	60,872	2021
McLane Street	Industrial	California	2005 / 2019	1,577	15,935	—	1,577	15,935	17,512	(1,050)	16,462	2020
63795 19th Avenue	Industrial	California	2004 / 2021	2,177	12,852	—	2,177	12,852	15,029	(1,479)	13,550	2019
North Anza Road	Industrial	California	1980 / 2017	916	5,406	—	916	5,406	6,322	(622)	5,700	2019
North Anza Road & Del Sol Road	Industrial	California	1980 / 2017	840	4,959	—	840	4,959	5,799	(571)	5,228	2019
1804 Needles Highway	Industrial	California	1964 / 2019	174	715	—	174	715	889	(65)	824	2019
West Broadway	Industrial	California	1976 / 2019	289	1,185	—	289	1,185	1,474	(108)	1,366	2019
3253 Needles Highway	Industrial	California	2018 / 2019	949	3,900	—	949	3,900	4,849	(354)	4,495	2019
3241 & 3247 Needles Highway	Industrial	California	2020 / 2020	1,981	8,138	—	1,981	8,138	10,119	(739)	9,380	2019
Sacramento Steele Street	Industrial	California	1990 / 2019	1,376	5,321	6,033	1,376	11,354	12,730	(1,335)	11,395	2019
Washington Street	Industrial	Colorado	1967 / 1978 / 2018	2,101	9,176	—	2,101	9,176	11,277	(1,305)	9,972	2018
West Washington Street	Industrial	Colorado	1975 / 2017	4,309	4,988	—	4,309	4,988	9,297	(140)	9,157	2021
Barberry Place	Industrial	Colorado	1971 / 2012	389	2,478	—	389	2,478	2,867	(66)	2,801	2021
Hamilton Road	Industrial	Florida	1982 / 2021	2,186	17,371	—	2,186	17,371	19,557	(993)	18,564	2020
West Lake Drive	Industrial	Florida	2014 / 2021	1,071	34,249	52,343	1,071	86,592	87,663	(5,541)	82,122	2020
NW Highway 441	Industrial	Florida	1981 / 2021	752	23,064	17,782	752	40,846	41,598	(2,046)	39,552	2021
Ben Bostic Road	Industrial	Florida	2019 / 2020	274	16,729	—	274	16,729	17,003	(1,688)	15,315	2019
East Mazon Avenue	Industrial	Illinois	1992 / 2020	201	17,807	10,008	201	27,815	28,016	(3,065)	24,951	2019
Revolution Road	Industrial	Illinois	2015 / 2020	563	18,457	51,539	563	69,996	70,559	(6,996)	63,563	2018
East 4th Street	Industrial	Illinois	2015 / 2020	739	8,284	40,997	739	49,281	50,020	(4,139)	45,881	2020
Industrial Drive	Industrial	Illinois	1984 / 2020	350	10,191	29,446	350	39,637	39,987	(3,716)	36,271	2019
S US Highway 45	Industrial	Illinois	2015 / 2019	268	11,840	13,286	268	25,126	25,394	(2,748)	22,646	2019
52 Centerpoint Way	Industrial	Illinois	2016 / 2019	2,947	17,761	248	2,947	18,009	20,956	(1,812)	19,144	2019
Adams Street	Industrial	Illinois	(2)	3,366	—	43,036	3,366	43,036	46,402	(694)	45,708	2021
South Street	Industrial	Maryland	1980 / 2021	1,861	14,775	12,734	1,861	27,509	29,370	(1,181)	28,189	2021
Alaking Court	Industrial	Maryland	2017 / 2017	2,785	8,410	22,765	2,785	31,175	33,960	(4,417)	29,543	2017
Western Maryland Parkway	Industrial	Maryland	1996 / 2021	1,849	23,441	—	1,849	23,441	25,290	(415)	24,875	2022
Hopping Brook Road	Industrial	Massachusetts	2020 / 2020	3,030	—	27,512	3,030	27,512	30,542	(2,530)	28,012	2018
Chestnut Hill Avenue	Industrial	Massachusetts	1938 / 2021	2,202	24,568	36,965	2,202	61,533	63,735	(3,959)	59,776	2020
Worcester Road	Industrial	Massachusetts	1973 / 2022	4,063	16,462	—	4,063	16,462	20,525	(120)	20,405	2022
Canal Street/7 North Bridge Street	Industrial	Massachusetts	1890 / 2021	694	2,831	40,035	694	42,866	43,560	(5,166)	38,394	2019
Palmer Road	Industrial	Massachusetts	1980 / 2018	1,059	11,717	6,973	1,059	18,690	19,749	(1,936)	17,813	2018
East Main Street	Industrial	Massachusetts	1991 / 2019	2,316	13,194	—	2,316	13,194	15,510	(762)	14,748	2020
Curran Highway	Industrial	Massachusetts	1978 / 2021	2,082	1,026	23,662	2,082	24,688	26,770	(722)	26,048	2021
Hoover Road	Industrial	Michigan	1940 / 2020 / 2021	1,237	17,791	64,484	1,237	82,275	83,512	(5,637)	77,875	2019
East Hazel Street	Industrial	Michigan	1929 / 2021	409	4,360	19,297	409	23,657	24,066	(1,897)	22,169	2019
Oliver			1930 / 1972 /									

Drive	Industrial	Michigan	2021	1,385	3,631	26,755	1,385	30,386	31,771	(2,016)	29,755	2020
Davis												
Highway	Industrial	Michigan	1999 / (2)	1,907	13,647	39,573	1,907	53,220	55,127	(1,336)	53,791	2021
Harvest												
Park	Industrial	Michigan	2018 / 2021	1,933	3,559	10,301	1,933	13,860	15,793	(2,072)	13,721	2018
Executive												
Drive	Industrial	Michigan	1960 / 2020	389	6,489	3,139	389	9,628	10,017	(1,131)	8,886	2019



[Table of Contents](#)

Property	Property Type ⁽¹⁾	State	Year Built/Renovated	Initial Costs		Costs Capitalized Subsequent to Acquisition	Total Costs			Accumulated Depreciation	Net Cost Basis	Year Acquired
				Land	Building and Improvements		Land	Building and Improvements	Total			
77th Street Northeast Industrial Drive East	Industrial	Minnesota	2015 / 2017 / 2019	427	2,644	6,618	427	9,262	9,689	(1,366)	8,323	2017
Cheyenne Avenue	Industrial	Missouri	2022	753	787	26,708	753	27,495	28,248	(712)	27,536	2021
Munsonhurst Road	Industrial	Nevada	1984 / 2020	1,088	2,768	5,771	1,088	8,539	9,627	(1,034)	8,593	2019
South Route 73	Industrial	New Jersey	1956 / 2022	4,987	30,421	4,616	4,987	35,037	40,024	(964)	39,060	2022
North West Blvd	Industrial	New Jersey	1995 / 2020	702	4,857	29,511	702	34,368	35,070	(3,162)	31,908	2020
Hudson Crossing Drive	Industrial	New Jersey	1962 / 2020	222	10,046	1,580	222	11,626	11,848	(868)	10,980	2020
County Route 117	Industrial	New York	2016 / (2)	7,600	22,475	57,723	7,600	80,198	87,798	(4,582)	83,216	2016
98th Ave South	Industrial	New York	1970 / (2)	1,593	3,157	51,124	1,593	54,281	55,874	(2,314)	53,560	2017
Hunts Landing Road	Industrial	North Dakota	2018 / 2020	191	9,743	2,271	191	12,014	12,205	(1,204)	11,001	2019
Jason Street	Industrial	Ohio	2019 / 2019	712	—	19,310	712	19,310	20,022	(1,661)	18,361	2019
Springs Way East	Industrial	Ohio	1937 / 2020	239	2,688	29,250	239	31,938	32,177	(2,163)	30,014	2020
Tallmadge Ave.	Industrial	Ohio	2018 / 2020	235	10,377	2,949	235	13,326	13,561	(1,038)	12,523	2020
Scott Technology Park	Industrial	Ohio	1954 / 1986 / 2020	22	1,014	2,501	22	3,515	3,537	(506)	3,031	2019
New Beaver Avenue	Industrial	Pennsylvania	2020 / 2020	954	—	27,070	954	27,070	28,024	(1,720)	26,304	2019
East Market Street	Industrial	Pennsylvania	1976 / 2021	6,979	34,781	25,893	6,979	60,674	67,653	(2,944)	64,709	2021
Wayne Avenue	Industrial	Pennsylvania	1927 / 2017	1,435	19,098	74,306	1,435	93,404	94,839	(6,610)	88,229	2019
Horton Drive	Industrial	Pennsylvania	1980 / (2)	1,228	13,080	37,595	1,228	50,675	51,903	(3,798)	48,105	2019
Industrial Street	Industrial	Pennsylvania	1988 / 2020	1,353	11,854	29,741	1,353	41,595	42,948	(2,872)	40,076	2019
Rosanna Avenue	Industrial	Pennsylvania	1930 / 2020	941	7,941	15,967	941	23,908	24,849	(1,623)	23,226	2020
FM 969	Industrial	Texas	1959 / 2020 (2)	3,540	5,603	36,671	3,540	42,274	45,814	(3,625)	42,189	2018
Decatur Street	Industrial	Texas	—	—	11,157	4,542	—	15,699	15,699	(212)	15,487	2022
Lathrop Industrial Drive SW	Industrial	Virginia	2019 / 2020	231	11,582	7,936	231	19,518	19,749	(2,402)	17,347	2020
East Glendale Avenue	Industrial	Washington	1997 / 2015	1,826	15,684	—	1,826	15,684	17,510	(1,009)	16,501	2020
Dahlia Street	Retail	Arizona	2019 / 2019	1,216	811	501	1,216	1,312	2,528	(176)	2,352	2019
East Colfax Avenue	Retail	Colorado	2019 / 2019	179	2,132	—	179	2,132	2,311	(146)	2,165	2020
North 2nd Street	Retail	Colorado	1998 / 2020	244	307	906	244	1,213	1,457	(30)	1,427	2021
West Railroad Avenue	Retail	Colorado	1973 / 2020	140	258	801	140	1,059	1,199	(24)	1,175	2021
Southgate PI	Retail	Colorado	1977 / 2020	149	618	168	149	786	935	(32)	903	2021
Wewatta Street	Retail	Colorado	1998 / 2019	367	645	55	367	700	1,067	(63)	1,004	2020
Southgate Place	Retail	Colorado	2015 / 2018	4,036	2,417	—	4,036	2,417	6,453	(66)	6,387	2021
South Peoria Court	Retail	Colorado	2018 / 2018	942	3,314	—	942	3,314	4,256	(99)	4,157	2021
Highway 6 & 24	Retail	Colorado	1979 / 2016	938	2,770	—	938	2,770	3,708	(82)	3,626	2021
North College Avenue	Retail	Colorado	1960 / 2019	892	1,996	—	892	1,996	2,888	(59)	2,829	2021
East Quincy Avenue	Retail	Colorado	1952 / 2017	527	2,952	—	527	2,952	3,479	(79)	3,400	2021
East Montview Boulevard	Retail	Colorado	2018 / 2018	659	2,493	—	659	2,493	3,152	(71)	3,081	2021
South Federal Blvd	Retail	Colorado	1952 / 2019	256	1,490	—	256	1,490	1,746	(41)	1,705	2021
Santa Fe Trail	Retail	Colorado	1980 / 2017	193	1,361	—	193	1,361	1,554	(36)	1,518	2021
Water Street	Retail	Colorado	1948 / 2000	232	1,110	—	232	1,110	1,342	(32)	1,310	2021
Gregory Street	Retail	Colorado	1930 / 2013	319	945	—	319	945	1,264	(29)	1,235	2021
West 20th Avenue	Retail	Colorado	1875 / 2014	101	1,058	—	101	1,058	1,159	(27)	1,132	2021
South Federal Blvd.	Retail	Colorado	1970 / 2014	289	666	—	289	666	955	(19)	936	2021
West 6th Street	Retail	Colorado	1941 / 2018	461	319	—	461	319	780	(10)	770	2021
Elm Avenue	Retail	Colorado	2019 / 2019	60	272	—	60	272	332	(9)	323	2021
Bent Avenue	Retail	Colorado	1962 / 2020	21	311	—	21	311	332	(11)	321	2021
North Coolidge Rd	Retail	Colorado	2019 / 2019	49	284	—	49	284	333	(9)	324	2021
South Cedar Street	Retail	Michigan	2019 / 2019	1,635	—	1,755	1,635	1,755	3,390	(182)	3,208	2019
West Pierson Road	Retail	Michigan	1957 / 2019	282	1,951	—	282	1,951	2,233	(248)	1,985	2019
	Retail	Michigan	1975 / 2019	122	2,065	—	122	2,065	2,187	(243)	1,944	2019

Wilder Road	Retail	Michigan	1988 / 2019	49	1,696	—	49	1,696	1,745	(194)	1,551	2019
East Front Street	Retail	Michigan	1992 / 2019	449	827	—	449	827	1,276	(142)	1,134	2019
South												
Mason Drive	Retail	Michigan	1970 / 2019	25	973	—	25	973	998	(111)	887	2019
N Delsea Dr	Retail	New Jersey	1974 / 2020	244	1,928	—	244	1,928	2,172	(118)	2,054	2020
24th Street												
East	Retail	North Dakota	2019 / 2019	348	1,368	—	348	1,368	1,716	(43)	1,673	2021

[Table of Contents](#)

Property	Property Type ⁽¹⁾	State	Year Built/Renovated	Initial Costs		Costs Capitalized Subsequent to Acquisition	Total Costs			Accumulated Depreciation	Net Cost Basis	Year Acquired
				Land	Building and Improvements		Land	Building and Improvements	Total			
Highway 2 East Main Street	Retail	North Dakota	1976 / 2019	120	1,225	—	120	1,225	1,345	(40)	1,305	2021
South 17th Street	Retail	Pennsylvania	1980 / 2019	57	840	—	57	840	897	(22)	875	2021
Esperanza Street	Retail	Pennsylvania	2021 / 2021	553	2,000	—	553	2,000	2,553	(40)	2,513	2022
Grape Street	Industrial/Retail	California	1926 / 1976	1,713	11,307	981	1,713	12,288	14,001	(1,036)	12,965	2019
US 50 Business and Baxter Road	Industrial/Retail	Colorado	1982 / 2018	1,380	5,786	—	1,380	5,786	7,166	(157)	7,009	2021
South Fox Street	Industrial/Retail	Colorado	1929 / 2019	119	1,652	—	119	1,652	1,771	(54)	1,717	2021
West Street	Industrial/Retail	Colorado	1965 / 2014	297	829	—	297	829	1,126	(22)	1,104	2021
Mozzone Boulevard	Industrial/Retail	Massachusetts	1880 / 2021	650	7,119	17,381	650	24,500	25,150	(1,566)	23,584	2020
Stephenson Highway	Industrial/Retail	Massachusetts	1975 / 2019	1,626	38,406	—	1,626	38,406	40,032	(660)	39,372	2022
Hoover Road	Industrial/Retail	Michigan	2021 / 2021	6,211	—	22,293	6,211	22,293	28,504	(1,084)	27,420	2020
Leah Avenue	Industrial/Retail	Michigan	1951 / 2021	700	9,557	6,979	700	16,536	17,236	(756)	16,480	2021
Inland Center Drive	Industrial/Retail	Texas	(2)	2,222	1,195	4,848	2,222	6,043	8,265	(164)	8,101	2021
Perez Road	Under Development	California	1969 / (2)	3,485	21,911	9,587	3,485	31,498	34,983	—	34,983	2020
63795 19th Avenue	Under Development	California	1981 / (2)	734	5,634	1,825	734	7,459	8,193	(153)	8,040	2022
Expansion	Under Development	California	(2)	1,357	—	22,609	1,357	22,609	23,966	—	23,966	2021
Total				\$139,953	\$ 858,967	\$ 1,205,767	\$139,953	\$ 2,064,734	\$2,204,687	\$ (138,405)	\$2,066,282	

- (1) “Industrial” reflects facilities utilized or expected to be utilized for regulated cannabis cultivation, processing and/or distribution activities, which can consist of industrial and/or greenhouse space.
- (2) As of December 31, 2022, all or a portion of the property was under development or redevelopment.

As of December 31, 2022, the aggregate gross cost of the properties included above for federal income tax purposes was approximately \$2.2 billion.

A reconciliation of historical cost and related accumulated depreciation is as follows (in thousands):

	Years Ended December 31,		
	2022	2021	2020
Investment in real estate, at cost:			
Balance at beginning of year	\$ 1,722,104	\$ 1,060,239	\$ 518,031
Purchases of investments in real estate	149,317	277,717	241,159
Additions and improvements, net	355,633	384,148	301,049
Sale of real estate investments	(22,367)	—	—
Balance at end of year	<u>\$ 2,204,687</u>	<u>\$ 1,722,104</u>	<u>\$ 1,060,239</u>
Accumulated Depreciation:			
Balance at beginning of year	\$ (81,938)	\$ (40,195)	\$ (12,170)
Depreciation expense, net	(58,935)	(41,743)	(28,025)
Sale of real estate investments	2,468	—	—
Balance at end of year	<u>\$ (138,405)</u>	<u>\$ (81,938)</u>	<u>\$ (40,195)</u>

Subsidiaries of the Registrant

The list below excludes subsidiaries in the same line of business (ownership and operation of commercial real estate) and includes the immediate parent of each excluded subsidiary. The list also excludes subsidiaries that in the aggregate, as a single subsidiary, would not constitute a significant subsidiary as of December 31, 2022. A total of 69 subsidiaries have been excluded.

Subsidiary	State of Incorporation/Formation
IIP Operating Partnership, LP	Delaware
Innovative Industrial Properties, LP	Delaware
IIPR, Inc.	Maryland
IIP-GP 2 LLC	Delaware

Consent of Independent Registered Public Accounting Firm

Innovative Industrial Properties, Inc.
Park City, Utah

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-262320), Form S-4 (No. 333-258043) and Form S-8 (No. 333-214919) of Innovative Industrial Properties, Inc. of our reports dated February 28, 2023, relating to the consolidated financial statements and financial statement schedule, and the effectiveness of Innovative Industrial Properties, Inc.'s internal control over financial reporting, which appear in this Form 10-K. Our report on the effectiveness of internal control over financial reporting expresses an adverse opinion on the effectiveness of the Company's internal control over financial reporting as of December 31, 2022.

/s/ BDO USA, LLP

San Diego, California
February 28, 2023

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

I, Paul Smithers, certify that:

- 1) I have reviewed this Annual Report on Form 10-K 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)) 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) 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
 - (c) 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: February 28, 2023

/s/ Paul Smithers
Paul Smithers
Chief Executive Officer, President and Director

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

I, Catherine Hastings, certify that:

- 1) I have reviewed this Annual Report on Form 10-K 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)) 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) 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
 - (c) 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: February 28, 2023

/s/ Catherine Hastings
Catherine Hastings
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 Annual Report on Form 10-K of Innovative Industrial Properties, Inc. (the "Company") for the year ended December 31, 2022, 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, Catherine Hastings, 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.

February 28, 2023

/s/ Paul Smithers
Paul Smithers
Chief Executive Officer, President and Director

/s/ Catherine Hastings
Catherine Hastings
Chief Financial Officer and Treasurer
