

BERKSHIRE INCOME REALTY INC  
Form 8-K  
January 10, 2006  
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

Date of Report (Date of Earliest event reported)      January 4, 2006

Berkshire Income Realty, Inc  
(Exact name of Registrant as specified in its charter)

Maryland (State or other jurisdiction of incorporation)	001-31659 (Commission File Number)	32-0024337 (IRS Employer Identification No.)
--	---------------------------------------	---

One Beacon Street, Boston, Massachusetts (Address of principal executive offices)	02108 (Zip Code)
--	---------------------

Registrants telephone number, including area code      (617) 523-7722

(Former name or former address, if changes since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Edgar Filing: BERKSHIRE INCOME REALTY INC - Form 8-K

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

---

**Item 1.01 Entry into a Material Definitive Agreement**

On January 4, 2006, the operating partnership of the Registrant, Berkshire Income Realty OP, L.P., through its subsidiaries JV Marina Mile, LLC, and BIR I, LLC, (the Seller), entered into a purchase and sale agreement (the Agreement) to sell The Berkshires at Marina Mile Apartments (Marina Mile), a 306 unit multifamily apartment community located in Ft Lauderdale, Florida, to Metro Real Estate Group, Inc (the Buyer). The sales price of the property is \$46,955,000, and is subject to normal operating prorations and adjustments as provided for in the Agreement. The Buyer is an unaffiliated third party.

The Registrant has structured the transaction as a Section 1031 tax deferred exchange under the Internal Revenue Code of 1986, as amended, and intends to reinvest its share of the proceeds from the sale of Marina Mile in the purchase of a qualified replacement property.

The Agreement provides for an inspection period, during which the Buyer may enter the property to perform due diligence activities. The inspection period ends February 1, 2006. The Agreement also contains a right of termination, which provides the Buyer the option to terminate the Agreement in its sole discretion. The termination right expires contemporaneously with the expiration of the inspection period.

The Agreement calls for a closing on the sale of the property to take place on or before March 2, 2006, and provides for a one-time right for the Buyer to extend the closing date to no later than April 4, 2006, subject to payment to the Registrant of an additional deposit of \$250,000. The agreement requires the Buyer to indemnify the Registrant from any and all liabilities, claims, costs and expenses arising out of the Buyer's entry onto the property upon exercise of its right of inspection during the inspection period. Such indemnification shall survive the closing on the property or the termination of the Agreement.

**Item 9.01 Financial Statements and Exhibits**

**(c) Exhibits**

Exhibit 10.1 Purchase and Sale Agreement between Marina Mile, LLC and BIR I, LLC (individually and collectively, as applicable, Seller) and Metro Real Estate Group, Inc. dated January 3, 2006.

**SIGNATURES**

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

**Berkshire Income Realty, Inc.**

Date: January 10, 2006

/s/ Christopher M. Nichols

Name: Christopher M. Nichols

Title: Vice President and Principle Accounting Officer

t-indent:0pt;;font-size:8pt;;">

—

37

—

—

40

40

33

—

1970

40

Westfields Marriott Washington Dulles

—

7

32

16

—

7

48

55

27

—

1994

40

Total hotels:

709

1,966

9,359

4,076

(32



)

1,952

13,417

15,369

5,037

Other properties, each less than 5% of total

—

21

4

17

(3

)

21

18

39

11

—

various

40

TOTAL

\$

709

\$

1,987

\$

9,363

\$

4,093

\$

(35

)

\$

1,973

\$

13,435

\$

15,408

\$

5,048



## SCHEDULE III

Page 6 of 6

HOST HOTELS &amp; RESORTS, INC., AND SUBSIDIARIES

HOST HOTELS &amp; RESORTS, L.P., AND SUBSIDIARIES

REAL ESTATE AND ACCUMULATED DEPRECIATION

December 31, 2013

(in millions)

Notes:

(A) The change in total cost of properties for the fiscal years ended December 31, 2013, 2012 and 2011 is as follows:

Balance at December 31, 2010	\$13,749
Additions:	
Acquisitions	1,155
Capital expenditures and transfers from construction-in-progress	338
Deductions:	
Dispositions and other	(214 )
Impairments	(8 )
Balance at December 31, 2011	15,020
Additions:	
Acquisitions	427
Capital expenditures and transfers from construction-in-progress	443
Deductions:	
Dispositions and other	(172 )
Impairments	(57 )
Balance at December 31, 2012	15,661
Additions:	
Acquisitions	184
Capital expenditures and transfers from construction-in-progress	353
Deductions:	
Dispositions and other	(789 )
Impairments	(1 )
Balance at December 31, 2013	\$15,408

(B) The change in accumulated depreciation and amortization of real estate assets for the fiscal years ended December 31, 2013, 2012 and 2011 is as follows:

Balance at December 31, 2010	\$3,834
Depreciation and amortization	496
Dispositions and other	(24 )
Balance at December 31, 2011	4,306

Depreciation and amortization	537
Dispositions and other	(75 )
Balance at December 31, 2012	4,768
Depreciation and amortization	550
Dispositions and other	(270 )
Balance at December 31, 2013	\$5,048

(C) The aggregate cost of real estate for federal income tax purposes is approximately \$10,745 million at December 31, 2013.

(D) The total cost of properties excludes construction-in-progress properties.



EXHIBIT INDEX

Exhibit

No.	Description
3.	Articles of Incorporation and Bylaws
3.1	Articles of Restatement of Articles of Incorporation of Host Hotels & Resorts, Inc. (incorporated by reference to Exhibit 3.3 of Host Hotels & Resorts, L.P. Registration Statement on Form S-4 (SEC File No. 333-170934), filed on December 2, 2010).
3.1A	Third Amended and Restated Agreement of Limited Partnership of Host Hotels & Resorts, L.P. (incorporated by reference to Exhibit 3.1 of Host Hotels & Resorts, L.P.'s Annual Report on Form 10-K for the year ended December 31, 2006, filed on March 1, 2007).
3.2	Amended and Restated Bylaws of Host Hotels & Resorts, Inc., effective November 6, 2008 (incorporated by reference to Exhibit 3.3 of Host Hotels & Resorts, Inc.'s Current Report on Form 8-K, filed on November 12, 2008).
4.	Instruments Defining Rights of Security Holders
4.1	See Exhibit 3.1 and 3.2 for provisions of the Articles and Bylaws of Host Hotels & Resorts, Inc. defining the rights of security holders. See Exhibit 3.1A for provisions of the Agreement of Limited Partnership of Host Hotels & Resorts, L.P. defining the rights of security holders.
4.2	Form of Common Stock Certificate (incorporated herein by reference to Exhibit 4.7 to Host Marriott Corporation's Amendment No. 4 to its Registration Statement on Form S-4 (SEC File No. 333-55807) filed on October 2, 1998).
4.3	Amended and Restated Indenture dated as of August 5, 1998, by and among HMH Properties, Inc., as Issuer, and the Subsidiary Guarantors named therein, and Marine Midland Bank, as Trustee (incorporated by reference to Exhibit 4.1 of Host Marriott Corporation's Current Report on Form 8-K dated August 6, 1998) (SEC File No. 001-05664).
4.4	Third Supplemental Indenture, dated as of December 14, 1998, by and among HMH Properties Inc., Host Marriott, L.P., the entities identified therein as New Subsidiary Guarantors and Marine Midland Bank, as Trustee, to the Amended and Restated Indenture, dated as of August 5, 1998, among the Company, the Guarantors named therein, Subsidiary Guarantors named therein and the Trustee (incorporated by reference to Exhibit 4.3 of Host Marriott, L.P.'s Current Report on Form 8-K filed with the Commission on December 31, 1998) (SEC File No. 333-55807).
4.5	Thirty-Second Supplemental Indenture, dated December 22, 2009, by and among Host Hotels & Resorts, L.P., Host Hotels & Resorts, Inc., the Subsidiary Guarantors named therein and The Bank of New York Mellon (formerly, The Bank of New York) as successor to HSBC Bank USA (formerly, Marine Midland Bank), as trustee, to the Amended and Restated Indenture dated August 5, 1998, including form of debenture (incorporated by reference to Exhibit 4.1 to Host Hotels & Resorts, Inc.'s Current Report on Form 8-K, filed December 23, 2009).

Edgar Filing: BERKSHIRE INCOME REALTY INC - Form 8-K

- 4.6 Registration Rights Agreement, dated December 22, 2009, among Host Hotels & Resorts, L.P., Host Hotels & Resorts, Inc. and Deutsche Bank Securities Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities Inc., in their capacity as representatives of the several initial purchasers of the debentures, related to the 2.50% Exchangeable Senior Debentures due 2029 (incorporated by reference to Exhibit 10.1 to Host Hotels & Resorts, Inc.'s Current Report on Form 8-K filed on December 23, 2009).
- 4.7 Thirty-Sixth Supplemental Indenture, dated October 25, 2010, by and among Host Hotels & Resorts, L.P., the Subsidiary Guarantors named therein and The Bank of New York Mellon, as successor to HSBC Bank USA (formerly, Marine Midland Bank), as trustee, to the Amended and Restated Indenture dated August 5, 1998, including form of debenture (incorporated by reference to Exhibit 4.1 to Host Hotels & Resorts, Inc.'s Current Report on Form 8-K, filed on October 29, 2010).
- 4.8 Thirty-Ninth Supplemental Indenture, dated May 11, 2011, by and among Host Hotels & Resorts, L.P., the Subsidiary Guarantors named therein and the Bank of New York Mellon, as trustee, to the Amended and Restated Indenture dated August 5, 1998, including form of debenture (incorporated by reference to Exhibit 4.1 to Host Hotels & Resorts, Inc.'s Current Report on Form 8-K, filed May 12, 2011).
-

EXHIBIT INDEX

Exhibit

No.	Description
4.9	Forty-First Supplemental Indenture, dated November 18, 2011, by and among Host Hotels & Resorts, L.P., the Subsidiary Guarantors named therein and The Bank of New York Mellon, as trustee, to the Amended and Restated Indenture dated August 5, 1998, including form of debenture (incorporated by reference to Exhibit 4.1 to the combined Current Report on Form 8-K of Host Hotels & Resorts, Inc., and Host Hotels & Resorts L.P., filed on November 18, 2011).
4.10	Forty-Second Supplemental Indenture, dated March 22, 2012, by and among Host Hotels & Resorts, L.P. and The Bank of New York Mellon, as trustee, to the Amended and Restated Indenture dated August 5, 1998, including form of debenture (incorporated by reference to Exhibit 4.1 to the combined Current Report on Form 8-K of Host Hotels & Resorts, Inc., and Host Hotels & Resorts L.P., filed on March 23, 2012).
4.11	Forty-Third Supplemental Indenture, dated August 9, 2012, by and among Host Hotels & Resorts, L.P. and The Bank of New York Mellon, as trustee, to the Amended and Restated Indenture dated August 5, 1998, including form of debenture (incorporated by reference to Exhibit 4.1 to the combined Current Report on Form 8-K of Host Hotels & Resorts, Inc., and Host Hotels & Resorts L.P., filed on August 9, 2012).
4.12	Forty-Fourth Supplemental Indenture, dated March 28, 2013, by and among Host Hotels & Resorts, L.P. and The Bank of New York Mellon, as trustee, to the Amended and Restated Indenture dated August 5, 1998, including form of debenture (incorporated by reference to Exhibit 4.1 to the combined Current Report on Form 8-K of Host Hotels & Resorts, Inc., and Host Hotels & Resorts L.P., filed on March 28, 2013).
10.	Material Contracts
10.1*	Host Hotels & Resorts, L.P. Executive Deferred Compensation Plan as amended and restated effective January 1, 2014.
10.2*	Trust Agreement between Wilmington Trust Company and Host Hotels & Resorts, L.P., dated June 1, 2006, relating to the Host Hotels & Resorts, L.P. Executive Deferred Compensation Plan.
10.3	Host Marriott Corporation and Host Marriott, L.P. 1997 Comprehensive Stock and Cash Incentive Plan, as amended and restated December 29, 1998, as amended January 2004 (incorporated by reference to Exhibit 10.7 of Host Marriott Corporation's Annual Report on Form 10-K for the year ended December 31, 2003, filed March 2, 2004).
10.4*	Host Hotels & Resorts, Inc.'s Severance Plan for Executives, as amended and restated, effective as of December 16, 2013.
10.5	Indemnification Agreement for officers and directors of Host Hotels & Resorts, Inc. (incorporated by reference to Exhibit 10.7 of Host Hotels & Resorts, Inc. and Host Hotels & Resorts, L.P. Annual Report on Form 10-K for the year ended December 31, 2011, filed on February 22, 2012).
10.6	Host Hotels & Resorts 2009 Comprehensive Stock and Cash Incentive Plan, effective as of March 12, 2009 (incorporated by reference to Appendix A to the Host Hotels & Resorts, Inc. Definitive Proxy Statement on Schedule 14A filed with the Commission on March 31, 2009).
10.7	

Edgar Filing: BERKSHIRE INCOME REALTY INC - Form 8-K

Form of Restricted Stock Agreement for use under the Host Hotels & Resorts 2009 Comprehensive Stock and Cash Incentive Plan (incorporated by reference to Exhibit 10.33 of Host Hotels & Resorts, Inc.'s Quarterly Report on Form 10-Q, filed July 28, 2009).

- 10.8 Form of Option Agreement for use under the Host Hotels & Resorts 2009 Comprehensive Stock and Cash Incentive Plan (incorporated by reference to Exhibit 10.34 of Host Hotels & Resorts, Inc.'s Quarterly Report on Form 10-Q, filed July 28, 2009).
- 10.9 Amended and Restated Host Hotels & Resorts, Inc. and Host Hotels & Resorts, L.P. Employee Stock Purchase Plan, effective as of January 1, 2008 (incorporated by reference to Exhibit 10.40 of Host Hotels & Resorts, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2007 filed with the Commission on February 25, 2008).
- 10.10# Fourth Amended and Restated Agreement of Limited Partnership of HHR EURO CV, dated as of June 27, 2011, by and among HST GP EURO B.V., HST Euro II LP B.V., APG Strategic Real Estate Pool N.V. and Jasmine Hotels Private Limited (incorporated by reference to Exhibit 10.23 to the combined Quarterly Report on Form 10-Q of Host Hotels & Resorts, Inc. and Host Hotels & Resorts, L.P., filed on July 25, 2011).
-

EXHIBIT INDEX

Exhibit

No. Description

- 10.11 First Amendment to the Fourth Amended and Restated Agreement of Limited Partnership of HHR EURO CV, dated as of April 17, 2013, by and among HHR EURO II GP B.V., HST LP EURO B.V., HST Euro II LP B.V., APG Strategic Real Estate Pool N.V. and Jasmine Hotels Private Limited (incorporated by reference to Exhibit 10.19 to the combined Quarterly Report on Form 10-Q of Host Hotels & Resorts, Inc., and Host Hotels & Resorts L.P., filed on May 7, 2013).
  
- 10.12 Credit Agreement, dated as of November 22, 2011, among Host Hotels & Resorts, L.P., certain Canadian subsidiaries of Host Hotels & Resorts, L.P., Bank of America, N.A., as administrative agent, JPMorgan Chase Bank, N.A., as syndication agent, Wells Fargo Bank, N.A., Deutsche Bank AG New York Branch and The Bank of Nova Scotia as co-documentation agents, and various other agents and lenders (incorporated by reference to Exhibit 10.1 to the combined Current Report on Form 8-K of Host Hotels & Resorts, Inc. and Host Hotels & Resorts, L.P., filed on November 29, 2011).
  
- 10.13 Amendment Agreement to Credit Agreement, dated as of July 25, 2012, among Host Hotels & Resorts, L.P., certain Canadian subsidiaries of Host Hotels & Resorts, L.P., Bank of America, N.A., as administrative agent, JPMorgan Chase Bank, N.A., as syndication agent, Wells Fargo Bank, N.A., Deutsche Bank AG New York Branch and The Bank of Nova Scotia as co-documentation agents, and various other agents and lenders (incorporated by reference to Exhibit 10.1 to the combined Current Report on Form 8-K of Host Hotels & Resorts, Inc. and Host Hotels & Resorts, L.P. filed on July 25, 2012).
  
- 10.14\* Host Hotels & Resorts, Inc.'s Non-Employee Directors' Deferred Stock Compensation Plan, as amended and restated effective as of December 15, 2009, as further amended February 2, 2012 and February 6, 2014.
  
- 10.15 Sales Agency Financing Agreement, dated April 24, 2012, between Host Hotels & Resorts, Inc. and BNY Mellon Capital Markets, LLC, as sales agent (incorporated by reference to Exhibit 1.1 of Host Hotels & Resorts, Inc.'s Current Report on Form 8-K filed on April 25, 2012).
  
- 10.16 Sales Agency Financing Agreement, dated April 24, 2012, between Host Hotels & Resorts, Inc. and Scotia Capital (USA) Inc., as sales agent (incorporated by reference to Exhibit 1.2 of Host Hotels & Resorts, Inc.'s Current Report on Form 8-K filed on April 25, 2012).
  
- 10.17 Amendment No. 1, dated as of April 25, 2013, to the Sales Agency Financing Agreement dated as of April 24, 2012, between Host Hotels & Resorts, Inc. and BNY Mellon Capital Markets, LLC (incorporated by reference to Exhibit 1.1 of Host Hotels & Resorts, Inc. Report on Form 8-K, filed on April 25, 2013).
  
- 10.18 Amendment No. 1, dated as of April 25, 2013, to the Sales Agency Financing Agreement dated as of April 24, 2012, between Host Hotels & Resorts, Inc. and Scotia Capital (USA) Inc. (incorporated by reference to Exhibit 1.2 of Host Hotels & Resorts, Inc. Report on Form 8-K, filed on April 25, 2013).
  
- 10.19 Employment Offer Letter between Host Hotels & Resorts, L.P. and Mr. Struan Robertson dated January 17, 2013 (incorporated by reference to Exhibit 10.18 of the combined Annual Report on Form 10-K of Host Hotels & Resorts, Inc. and Host Hotels & Resorts, L.P. filed on February 25, 2013).
  
- 12. Statements re Computation of Ratios
  
- 12.1\*

Edgar Filing: BERKSHIRE INCOME REALTY INC - Form 8-K

Computation of Ratios of Earnings to Fixed Charges and Preferred Stock Dividends for Host Hotels & Resorts, Inc.

12.2\* Computation of Ratios of Earnings to Fixed Charges and Preferred Unit Distributions for Host Hotels & Resorts, L.P.

21. Subsidiaries

21.1\* List of Subsidiaries of Host Hotels & Resorts, Inc.

21.2\* List of Subsidiaries of Host Hotels & Resorts, L.P.

23. Consents

23\* Consent of KPMG LLP

31. Rule 13a-14(a)/15d-14(a) Certifications

---

EXHIBIT INDEX

Exhibit

No.	Description	
31.1*	Certification of Chief Executive Officer for Host Hotels & Resorts, Inc. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	
31.2*	Certification of Chief Financial Officer for Host Hotels & Resorts, Inc. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	
31.3*	Certification of Chief Executive Officer for Host Hotels & Resorts, L.P. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	
31.4*	Certification of Chief Financial Officer for Host Hotels & Resorts, L.P. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	
32.	Section 1350 Certifications	
32.1*	Certification of Chief Executive Officer and Chief Financial Officer for Host Hotels & Resorts, Inc. pursuant to 18 U.S.C. 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002.†	
32.2*	Certification of Chief Executive Officer and Chief Financial Officer for Host Hotels & Resorts, L.P. pursuant to 18 U.S.C. 1350, as created by Section 906 of the Sarbanes-Oxley Act of 2002.†	
101.INS	XBRL Instance Document.	Submitted electronically with this report.
101.SCH	XBRL Taxonomy Extension Schema Document.	Submitted electronically with this report.
101.CAL	XBRL Taxonomy Calculation Linkbase Document.	Submitted electronically with this report.
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.	Submitted electronically with this report.
101.LAB	XBRL Taxonomy Label Linkbase Document.	Submitted electronically with this report.
101.PRE	XBRL Taxonomy Presentation Linkbase Document.	Submitted electronically with this report.

Attached as Exhibit 101 to this report are the following documents formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Statements of Operations for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host Hotels & Resorts, Inc.; (ii) the Consolidated Balance Sheets at December 31, 2013 and December 31, 2012, respectively, for Host Hotels & Resorts, Inc.; (iii) the Consolidated Statements of Comprehensive Income (Loss) for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host Hotels & Resorts, Inc.; (iv) the Consolidated Statements of Equity for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host Hotels & Resorts, Inc.; (v) the Consolidated Statements of Cash Flows for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host Hotels & Resorts, Inc.; (vi) the Consolidated Statements of Operations for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host Hotels & Resorts, L.P.; (vii) the Consolidated Balance Sheets at December 31, 2013 and December 31, 2012, respectively, for Host Hotels & Resorts, L.P.; (viii) the Consolidated Statements of Comprehensive Income (Loss) for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host Hotels & Resorts, L.P.; (ix) the Consolidated Statements of Capital for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host Hotels & Resorts, L.P.; (x) the Consolidated Statement of Cash Flows for the Years ended December 31, 2013, 2012 and 2011, respectively, for Host

Hotels & Resorts, L.P.; and (xi) Notes to the Consolidated Financial Statements that have been detail tagged.

\* Filed herewith.

# Confidential treatment requested.

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