

INDEPENDENCE REALTY TRUST, INC  
Form S-8  
October 07, 2013

As filed with the Securities and Exchange Commission on October 7, 2013.

Registration No. 333-

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

**FORM S-8**  
**REGISTRATION STATEMENT**  
***UNDER***  
***THE SECURITIES ACT OF 1933***

**Independence Realty Trust, Inc.**

**(Exact name of registrant as specified in its charter)**

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

**Cira Centre, 2929 Arch Street, 17th Floor,**

**26-4567130**  
**(I.R.S. Employer**

**Identification No.)**

**19104**

**Philadelphia, PA**  
(Address of Principal Executive Offices) (Zip Code)  
**Independence Realty Trust, Inc. Long Term Incentive Plan**

**Independence Realty Trust, Inc. Independent Directors Compensation Plan**  
(Full title of the plans)

**James J. Sebra**  
**Chief Financial Officer and Treasurer**  
**Independence Realty Trust, Inc.**  
**Cira Centre, 2929 Arch Street, 17th Floor,**  
**Philadelphia, PA 19104**

(Name and address of agent for service)

**(215) 243-9000**

(Telephone number, including area code, of agent for service)

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

Large accelerated filer

Accelerated filer

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

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>TITLE OF SECURITIES</b>	<b>AMOUNT TO BE REGISTERED (1)</b>	<b>PROPOSED MAXIMUM OFFERING PRICE PER SHARE (2)</b>	<b>PROPOSED MAXIMUM AGGREGATE OFFERING PRICE (2)</b>	<b>AMOUNT OF REGISTRATION FEE (2)</b>
Common Stock, \$0.01 par value per share	800,000	\$8.30	\$6,640,000	\$856

- (1) The registrant is filing this Registration Statement for the purpose of registering 800,000 shares of its common stock, \$0.01 par value per share (the "Common Stock"), issuable as compensation granted pursuant to the Independence Realty Trust, Inc. Long Term Incentive Plan (the "LTIP") and the Independence Realty Trust, Inc. Independent Directors Compensation Plan (the "IDCP"). The IDCP operates as a sub-plan of the LTIP and shares of Common Stock issued under the IDCP are issued under the LTIP. This Registration Statement also registers an indeterminate number of additional securities to be offered or issued upon adjustment or changes made to the registered securities by reason of any stock splits, stock dividends or similar transactions as permitted by Rule 416 under the Securities Act of 1933 (the "Securities Act").
- (2) Estimated solely for the purposes of calculating the registration fee, computed pursuant to Rules 457(c) and (h) under the Securities Act on the basis of the average of the high and low sales prices of a share of Common Stock, as reported on the NYSE MKT on October 1, 2013.

**PART I**

**INFORMATION REQUIRED IN SECTION 10(a) PROSPECTUS**

**ITEM 1. PLAN INFORMATION.**

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this registration statement in accordance with the Introductory Note to Part I of Form S-8.

**ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION.**

Information required by Part I to be contained in the Section 10(a) prospectus is omitted from this registration statement in accordance with the Introductory Note to Part I of Form S-8.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

Certain information about us is incorporated by reference to reports and exhibits we file with the Securities and Exchange Commission, or the SEC, that are not included in this registration statement. We disclose important information to you by referring you to these documents. Any statement contained in a document incorporated or deemed to be incorporated by reference into this registration statement will be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in this registration statement or any other subsequently filed document that is deemed to be incorporated by reference into this registration statement modifies or supersedes such statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this registration statement. We incorporate by reference the documents listed below that we have filed with the SEC:

Annual Report on Form 10-K for the year ended December 31, 2012 filed on March 13, 2013.

(i) The statements of revenue and certain expenses of a property commonly referred to as Runaway Bay Apartments for the year ended December 31, 2011, (ii) the statements of revenue and certain expenses of a property commonly referred to as Centrepont Apartments for the year ended December 31, 2010 and (iii) the combining statements of revenues and certain expenses of the properties commonly referred to as Crestmont Apartments, Cumberland Glen Apartments, Copper Mill Apartments, Heritage Trace Apartments, Belle Creek Apartments and Tresa at Arrowhead for the years ended December 31, 2010 and 2009 and for the period from October 8, 2008 to December 31, 2008, together with the related notes and the reports of Grant Thornton LLP appearing on pages F-43 through F-59 of our prospectus filed on August 14, 2013 pursuant to Rule 424(b) under the Securities Act of 1933, as amended.

Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2013 filed on August 14, 2013.

Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2013 filed on May 13, 2013.

Current Reports on Form 8-K filed on February 6, 2013, March 6, 2013, May 2, 2013, July 25, 2013, August 1, 2013 and August 20, 2013.

The description of our shares of common stock, par value \$0.01 per share, or the common stock, contained in our registration statement on Form 8-A filed on August 5, 2013.

All documents that we subsequently file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, or the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part thereof from the date of filing of such documents. Nothing in this registration statement shall be deemed to incorporate information furnished to but not filed with the SEC pursuant to Item 2.02 or Item 7.01 of Form 8-K (or corresponding information furnished under

Item 9.01 or included as an exhibit to Form 8-K).

**ITEM 4. DESCRIPTION OF SECURITIES.**

Not applicable.

**ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.**

Not applicable.

**ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.**

Maryland law permits a Maryland corporation to include in its charter a provision limiting the liability of its directors and officers to the corporation and its stockholders for money damages except for liability resulting from (a) actual receipt of an improper benefit or profit in money, property or services or (b) active and deliberate dishonesty established by a final judgment as being material to the cause of action. Our charter contains such a provision.

The Maryland General Corporation Law requires a corporation (unless its charter provides otherwise, which our charter does not) indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made or threatened to be made a party by reason of his or her service in that capacity. The Maryland General Corporation Law permits a corporation to indemnify its present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that (a) the act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty, (b) the director or officer actually received an improper personal benefit in money, property or services or (c) in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful. However, under the Maryland General Corporation Law, a Maryland corporation may not indemnify for an adverse judgment in a suit by or in the right of the corporation or for a judgment of liability on the basis that personal benefit was improperly received, unless in either case a court orders indemnification and then only for expenses.

In addition, the Maryland General Corporation Law permits a corporation to advance reasonable expenses to a director or officer upon the corporation's receipt of (a) a written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by the corporation and (b) a written undertaking by him or her or on his or her behalf to repay the amount paid or reimbursed by the corporation if it shall ultimately be determined that the standard of conduct was not met.

To the maximum extent permitted by Maryland law, our charter authorizes us to obligate our company and our bylaws obligate us to indemnify and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer and (b) any individual who, while a director or officer and at our request, serves or has served as a director, officer,

partner, member, manager, or trustee of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise (such persons being referred to herein as an Indemnitee) from and against any claim or liability to which an Indemnitee may become subject or which the Indemnitee may incur by reason of his, her or its service in such capacities. Our charter and bylaws also permit us to indemnify and advance expenses to any person who served a predecessor of our company in any of the capacities described above and to any employee or agent of our company or a predecessor of our company.

Our charter and bylaws provide that neither the amendment, nor the repeal, nor the adoption of any other provision of the charter or bylaws will apply to or affect, in any respect, an indemnified person's right to indemnification for any act or failure to act which occurred prior to such amendment, repeal or adoption.

To the extent that the indemnification may apply to liabilities arising under the Securities Act of 1933, as amended, we have been advised that, in the opinion of the Securities and Exchange Commission, such indemnification is contrary to public policy and, therefore, unenforceable.

#### **ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.**

Not applicable.

#### **ITEM 8. EXHIBITS.**

The Exhibits furnished as part of this registration statement on Form S-8 are identified in the Exhibit Index immediately following the signature pages of this registration statement. Such Exhibit Index is incorporated herein by reference.

#### **ITEM 9. UNDERTAKINGS.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended, or the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the

registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the forgoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



**SIGNATURES**

**The Registrant.** Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Philadelphia, Commonwealth of Pennsylvania, on October 7, 2013.

**INDEPENDENCE REALTY TRUST, INC.**

By: /s/ JAMES J. SEBRA

**James J. Sebra**

**Chief Financial Officer and Treasurer**

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**POWER OF ATTORNEY**

KNOW THAT ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Scott F. Schaeffer and James J. Sebra (each with full power to act alone), his or her true and lawful attorney-in-fact and agent with full power of substitution, in the name and on behalf of the undersigned, to do any and all acts and things and to execute any and all instruments which said attorney and agent, may deem necessary or advisable to enable Independence Realty Trust, Inc. (the Registrant ) to comply with the Securities Act of 1933, and with the Securities Exchange Act of 1934, and any rules, regulations and requirements of the Securities and Exchange Commission in respect thereof in connection with this Registration Statement and any and all amendments thereto or reports that the Registrant is required to file pursuant to the requirements of federal or state shares laws or any rules and regulations thereunder. The authority granted under this Power of Attorney shall include, but not be limited to, the power and authority to sign the name of the undersigned in the capacity or capacities set forth below to a Registration Statement on Form S-8 to be filed with the Securities and Exchange Commission, to any and all amendments (including post-effective amendments) to that Registration Statement in respect of the same, and to any and all instruments filed as a part of or in connection with that Registration Statement; and each of the undersigned hereby ratifies and confirms all that the attorney-in-fact and agent, shall lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this amended Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Name	Title	Date
/s/ SCOTT F. SCHAEFFER <b>Scott F. Schaeffer</b>	Chief Executive Officer, President and Chairman of the Board (Principal Executive Officer)	October 7, 2013
/s/ JAMES J. SEBRA <b>James J. Sebra</b>	Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)	October 7, 2013
/s/ WILLIAM C. DUNKELBERG <b>William C. Dunkelberg</b>	Independent Director	October 7, 2013
/s/ ROBERT F. MCCADDEN <b>Robert F. McCadden</b>	Independent Director	October 7, 2013
/s/ DEFOREST B. SOARIES, JR. <b>DeForest B. Soaries, Jr.</b>	Independent Director	October 7, 2013

**EXHIBIT INDEX**

**EXHIBIT**

**NUMBER**

**DESCRIPTION OF DOCUMENT**

4.1	Articles of Restatement of the registrant dated as of August 20, 2013, incorporated by reference to Exhibit 3.1 to the registrant's Current Report on Form 8-K filed on August 20, 2013.
4.2	Second Amended and Restated Bylaws of the registrant, incorporated by reference to Exhibit 3.2 the registrant's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013 (the First Quarter 10-Q).
4.3	Fourth Amended and Restated Agreement of Limited Partnership of Independence Realty Operating Partnership, LP, dated as of May 7, 2013, incorporated by reference to Exhibit 4.1 to the First Quarter 10-Q.
4.4	First Amendment, dated as of August 20, 2013, to Fourth Amended and Restated Agreement of Limited Partnership of Independence Realty Operating Partnership, LP, dated as of May 7, 2013, incorporated by reference to Exhibit 4.1 to the registrant's Current Report on Form 8-K filed on August 20, 2013
4.5	Registration Rights Agreement by and among the registrant, Independence Realty Operating Partnership, LP, RAIT Financial Trust and the RAIT Parties (as defined therein), dated as of July 26, 2013, incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on August 1, 2013.
4.6	Independence Realty Trust, Inc. Long Term Incentive Plan (as amended and restated as of July 29, 2013), incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on August 1, 2013.
4.7	Independence Realty Trust, Inc. Independent Directors Compensation Plan, incorporated by reference to Exhibit 10.5 to the registrant's Registration Statement on Form S-11 filed on April 8, 2011, Commission File No. 333-173391, as amended.
5.1	Opinion of Venable LLP as to legality of securities.
23.1	Consent of Grant Thornton LLP.
23.2	Consent of Grant Thornton LLP.
23.3	Consent of Venable, included in Exhibit 5.1.
24.1	Power of Attorney (included on signature page).