

AVIV REIT, INC.  
Form S-8  
March 25, 2013

As filed with the Securities and Exchange Commission on March 25, 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*

**AVIV REIT, INC.**

(Exact name of registrant as specified in its charter)

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

**303 West Madison Street**

**27-3200673**  
(IRS Employer

Identification No.)

**60606**

**Suite 2400**

**Chicago, IL**

(Address of Principal Executive Offices)

(Zip Code)

**Aviv REIT, Inc. 2013 Long-Term Incentive Plan**

**Aviv REIT, Inc. 2010 Management Incentive Plan**

(Full title of the plan)

**Craig M. Bernfield**

**Chief Executive Officer**

**Aviv REIT, Inc.**

**303 West Madison Street**

**Suite 2400**

**Chicago, Illinois 60606**

(Name and address of agent for service)

**(312) 855-0930**

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

*Copies to:*

**Robert L. Verigan**

**Sidley Austin LLP**

**One South Dearborn Street**

**Chicago, Illinois 60603**

**(312) 853-7000**

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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 the 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

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, \$0.01 par value	8,342,742 shares(1)	\$20.00(2)	\$166,854,840(2)	\$22,760

- (1) Represents 6,342,742 shares of common stock, par value \$0.01 per share (the Common Stock), of Aviv REIT, Inc. (the Registrant) issuable under the Aviv REIT, Inc. 2010 Management Incentive Plan, as amended (the MIP), including 5,870,139 shares issuable pursuant to the exercise of outstanding stock options under the MIP, and 2,000,000 shares of Common Stock of the Registrant issuable under the Aviv REIT, Inc. 2013 Long-Term Incentive Plan (the LTIP). Pursuant to Rule 416(a) of the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also registers such number of additional shares of Common Stock of the Registrant as may be offered pursuant to the terms of the MIP and the LTIP, which provide for a change in the amount or type of securities being offered or issued to prevent dilution as a result of stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h)(1) of the Securities Act and based upon the initial public offering price of the Registrant's common stock.

**PART I**

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

(a) The documents constituting Part I of this Registration Statement will be sent or given to the respective participants in the LTIP and the MIP as specified by Rule 428(b)(1) under the Securities Act.

(b) Upon written or oral request, the Registrant will provide, without charge, the documents incorporated by reference in Item 3 of Part II of this Registration Statement. The documents are incorporated by reference in the Section 10(a) prospectus. The Registrant will also provide, without charge, upon written or oral request, other documents required to be delivered to employees pursuant to Rule 428(b). Requests for the above-mentioned information should be directed to the General Counsel of the Registrant at the address and telephone number on the cover of this Registration Statement.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 3. *Incorporation of Documents by Reference.***

The following documents that have been filed with the Securities and Exchange Commission (the Commission) by the Registrant are incorporated herein by reference:

(1) The Registrant's prospectus filed pursuant to Rule 424(b) under the Securities Act on March 21, 2013 relating to the Registrant's Registration Statement on Form S-11 (File No. 333-185532), which includes audited financial statements; and

(2) The description of the Registrant's Common Stock contained in its Registration Statement on Form 8-A, filed under Section 12 of the Securities Exchange Act of 1934, as amended (the Exchange Act), on March 18, 2013, including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Registration Statement, prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the respective dates of filing of such documents (such documents, and the documents enumerated above, being hereinafter referred to as Incorporated Documents).

Any statement contained in an Incorporated Document shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed Incorporated Document modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**Item 4. *Description of Securities.***

Not applicable.

**Item 5. *Interests of Named Experts and Counsel.***

Not applicable.

**Item 6. *Indemnification of Directors and Officers.***

The Registrant's charter and bylaws provide for indemnification of its officers and directors against liabilities to the extent permitted by the Maryland General Corporation Law, as amended from time to time (the MGCL).

The MGCL requires a Maryland corporation (unless its charter provides otherwise, which the Registrant's charter does not) to 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 MGCL permits a Maryland 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 either was committed in bad faith or 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 MGCL, a Maryland corporation may not indemnify for an adverse judgment in a suit by or on behalf 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 MGCL permits a Maryland corporation to advance reasonable expenses to a director or officer upon its 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 the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by the corporation if it is ultimately determined that the director or officer did not meet the standard of conduct.

The Registrant's charter authorizes it, and the Registrant's bylaws obligate it, to the maximum 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 (a) any present or former director or officer who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Registrant and at the Registrant's request, serves or has served as a director, officer, partner, trustee, managing member or manager of another corporation, real estate investment trust, partnership, joint venture, trust, limited liability company, employee benefit plan or other enterprise and who is made, or threatened to be made, a party to the proceeding by reason of his or her service in that capacity. The Registrant's bylaws also permit the Registrant to indemnify and advance expenses to any person who served a predecessor of the Registrant in any of the capacities described above and to any employee or agent of the Registrant or a predecessor of the Registrant.

The Registrant also maintains directors' and officers' liability insurance and expects to enter into indemnification agreements with its directors and executive officers.

**Item 7. Exemption From Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

See the Exhibit Index, which 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;

(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 Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement; and

(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) of this section 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 Commission 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 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 this 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 foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission 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.

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**SIGNATURES**

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 Chicago, State of Illinois, on this 25<sup>th</sup> day of March, 2013.

**AVIV REIT, INC.**

By: /s/ Craig M. Bernfield

Name: Craig M. Bernfield

Title: Chairman and Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears immediately below constitutes and appoints Craig M. Bernfield, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same with all exhibits thereto and other documents in connection therewith with the Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Craig M. Bernfield Craig M. Bernfield	Chairman of the Board and Chief Executive Officer (principal executive officer)	March 25, 2013
/s/ Steven J. Insoft Steven J. Insoft	President and Chief Operating Officer (principal executive officer)	March 25, 2013
/s/ James H. Lyman James H. Lyman	Chief Financial Officer and Treasurer (principal financial officer)	March 25, 2013
/s/ Donna M. O Neill Donna M. O Neill	Chief Accounting Officer (principal accounting officer)	March 25, 2013
/s/ Michael W. Dees Michael W. Dees	Director	March 25, 2013
/s/ Alan E. Goldberg Alan E. Goldberg	Director	March 25, 2013
/s/ Robert D. Lindsay Robert D. Lindsay	Director	March 25, 2013
/s/ J. Russell Triedman J. Russell Triedman	Director	March 25, 2013

**EXHIBIT INDEX**

**TO**

**REGISTRATION STATEMENT ON FORM S-8**

<b>Exhibit Number</b>	<b>Description</b>
4.1	Form of Articles of Amendment and Restatement of Aviv REIT, Inc. (filed as Exhibit 3.1 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-185532) and incorporated herein by reference thereto).
4.2	Form of Amended and Restated Bylaws of Aviv REIT, Inc. (filed as Exhibit 3.2 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-185532) and incorporated herein by reference thereto).
4.3	Aviv REIT, Inc. 2013 Long-Term Incentive Plan.
4.4	Aviv REIT, Inc. 2010 Management Incentive Plan (filed as Exhibit 10.3 to the Registrant's Registration Statement on Form S-4 (Registration No. 333-173824) and incorporated herein by reference thereto).
4.5	First Amendment to the Aviv REIT, Inc. 2010 Management Incentive Plan.
5.1	Opinion of Venable LLP as to the legality of the securities being offered.
23.1	Consent of Venable LLP (included in opinion filed as Exhibit 5.1).
23.2	Consent of Ernst & Young LLP.
24.1	Powers of Attorney (contained in the signature page of this Registration Statement).