

INCOME OPPORTUNITY REALTY INVESTORS INC /TX/

Form 10-Q/A

November 08, 2005

FORM 10-Q/A
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

þ **QUARTERLY REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
FOR THE QUARTER ENDED MARCH 31, 2005

or

o **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 001-14784
INCOME OPPORTUNITY REALTY INVESTORS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Nevada

75-2615944

**(State or Other Jurisdiction of
Incorporation or Organization)**

**(I.R.S. Employer
Identification No.)**

1755 Wittington Place, Suite 340
Dallas, Texas

(Address of principal executive offices)
75234

(Zip Code)

**(Former name, former address and former fiscal year,
if changed since last report)**

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

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes o. No þ.

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

APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PRECEDING FIVE YEARS:

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes o. No o.

APPLICABLE ONLY TO CORPORATE ISSUERS:

Indicate the number of shares outstanding of each of the issuer's classes of Common Stock, as of the latest practicable date.

Common Stock, \$.01 par value
(Class)

4,168,035 shares
(Outstanding at November 4, 2005)

**AMENDMENT NO. 3 TO
QUARTERLY REPORT ON FORM 10-Q FOR
INCOME OPPORTUNITY REALTY INVESTORS, INC.
FOR THE QUARTER ENDED MARCH 31, 2005**

The undersigned Registrant hereby amends the following items, exhibits, or other portions of its Quarterly Report on Form 10-Q for the quarter year ended March 31, 2005 as set forth below and as reflected in the substituted pages attached hereto which replace the same numbered pages in the original filing and/or Amendment Nos. 1 and 2 (this Amendment No. 3 is necessitated by virtue of an oral request/comment of the Staff of the Securities and Exchange Commission on October 28, 2005):

Pages 4-12 Part I, Item 1. Financial Statements. The consolidated financial statements and related Notes are further amended to consolidate all prior amendments.

Exhibit 31.1 Certification Required by Exchange Act Rules 13a-14(a) and 15d-14(a) (refiled as required by Rule 12b-15).

Exhibit 32.1 Certification Pursuant to 18 U.S.C. § 1350 (refiled as required by Rule 12b-15).

SIGNATURES

Pursuant to the requirements of the Securities and Exchange Act of 1934, as amended, the Registrant has duly caused this Amendment to be signed on its behalf by the undersigned, thereunto duly-authorized.

Dated: November 7, 2005.

INCOME OPPORTUNITY REALTY INVESTORS,
INC.

By: /s/ Robert N. Crouch II
Robert N. Crouch II, Executive Vice
President, Chief
Financial Officer and Acting Principal
Executive Officer

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

The accompanying Consolidated Financial Statements as of and for the three months ended March 31, 2005, have not been audited by independent certified public accountants, but in the opinion of the management of Income Opportunity Realty Investors, Inc. (IORI), all adjustments (consisting of normal recurring accruals) necessary for a fair presentation of IORI 's consolidated financial position, consolidated results of operations and consolidated cash flows at the dates and for the periods indicated, have been included.

INCOME OPPORTUNITY REALTY INVESTORS, INC.

CONSOLIDATED BALANCE SHEETS

	March 31, 2005 (Restated)	December 31, 2004 (Restated)
	(dollars in thousands, except per share)	
Assets		
Real estate held for investment	\$ 35,033	\$ 34,988
Less accumulated depreciation	(3,796)	(3,620)
	31,237	31,368
Related Party Notes and interest receivable	55,454	54,911
Investment in real estate partnerships	596	604
Cash and cash equivalents	214	399
Receivables from affiliates	261	261
Other assets	3,034	3,095
	\$ 90,796	\$ 90,638
Liabilities and Stockholders' Equity		
Liabilities		
Notes and interest payable	\$ 44,372	\$ 44,571
Payables to affiliates	1,497	1,248
Other liabilities	1,344	1,529
	47,213	\$ 47,348
Commitments and contingencies		
Stockholders' equity		
Common Stock, \$.01 par value; authorized, 10,000,000 shares; issued and outstanding 1,389,345 shares in 2005 and 1,438,945 shares in 2004	14	14
Paid-in capital	61,983	61,983
Accumulated deficit	(18,414)	(18,707)
	43,583	43,290
	\$ 90,796	\$ 90,638

The accompanying notes are an integral part of these Consolidated Financial Statements.

INCOME OPPORTUNITY REALTY INVESTORS, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS

	For the Three Months Ended March 31, (dollars in thousands, except per share)	
	2005 (Restated)	2004 (Restated)
Property revenue		
Rents	\$ 1,529	\$ 2,136
Property expense		
Property operations (including \$29 in 2005 and \$32 in 2004 to affiliates and related parties)	821	1,211
Operating income	708	925
Other income (loss)		
Interest	974	598
Equity in loss of equity partnerships	(9)	(1)
	965	597
Other expense		
Interest	871	1,118
Depreciation	177	342
Advisory fee to affiliate	166	192
Net income fee to affiliate	24	215
General and administrative	142	270
	1,380	2,137
Net income (loss) from continuing operations	293	(615)
Discontinued operations:		
Loss from discontinued operations		(128)
Gain on sale of operations		3,257
		3,129
Net income	\$ 293	\$ 2,514
Earnings (loss) per share		
Net income (loss) from continuing operations	\$ 0.21	\$ (0.42)
Discontinued operations		2.17
Net income	\$ 0.21	\$ 1.75
Weighted average common shares used in computing earnings per share	1,389,345	1,438,945

The accompanying notes are an integral part of these Consolidated Financial Statements.

INCOME OPPORTUNITY REALTY INVESTORS, INC.
CONSOLIDATED STATEMENT OF STOCKHOLDERS EQUITY
For the Three Months Ended March 31, 2005

	Common Stock Shares	Amount	Paid-in Capital (dollars in thousands)	Accumulated Deficit	Stockholders Equity
Balance, January 1, 2005 (as restated)	1,389,345	\$14	\$61,983	\$(18,707)	\$43,290
Net income (as restated)				293	293
Balance, March 31, 2005 (as restated)	1,389,345	\$14	\$61,983	\$(18,414)	\$43,583

The accompanying notes are an integral part of these Consolidated Financial Statements.

INCOME OPPORTUNITY REALTY INVESTORS, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS

	For the Three Months Ended March 31,	
	2005	2004
	(Restated)	(Restated)
	(dollars in thousands)	
Cash Flows from Operating Activities		
Net income/(loss)	\$ 293	\$ 2,514
Reconciliation of net income (loss) to net cash used by operating activities		
Adjustments to reconcile net income (loss) to net cash used in operating activities		
Depreciation and amortization	246	347
Gain on sale of real estate		(3,257)
Loss of equity partnerships	9	1
(Increase) decrease in interest receivable	(543)	209
Decrease (Increase) in other assets	298	(129)
(Decrease) Increase in interest payable	(125)	17
(Decrease) Increase in other liabilities	(538)	385
Net cash provided by (used in) operating activities	(360)	87
Cash Flows from Investing Activities		
Funding of equity partnerships		
Real estate improvements		
Proceeds from sale of real estate		1,437
Advances from (payments to) advisor	249	(2,082)
Net cash provided by (used in) investing activities	249	(645)
Cash Flows from Financing Activities		
Payments on notes payable	\$ (74)	\$ (586)
Proceeds on notes payable		1,193
Deferred financing costs		5
Net cash provided by (used in) financing activities	(74)	612
Net increase in cash and cash equivalents	\$ (185)	\$ 54
Cash and cash equivalents, beginning of period	399	58
Cash and cash equivalents, end of period	\$ 214	\$ 112
Supplemental Disclosures of Cash Flow Information		
Cash paid for interest	\$ 978	\$ 1,107

The accompanying notes are an integral part of these Consolidated Financial Statements.

INCOME OPPORTUNITY INVESTORS, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. BASIS OF PRESENTATION

The accompanying Consolidated Financial Statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by generally accepted accounting principles for complete financial statements. Operating results for the three-month period ended March 31, 2005, are not necessarily indicative of the results that may be expected for the year ending December 31, 2005. For further information, refer to the Consolidated Financial Statements and notes thereto included in IORI's Annual Report on Form 10-K for the year ended December 31, 2004 (the "2004 Form 10-K"). Dollar amounts in tables are in thousands, except per share amounts.

Certain balances for 2004 have been reclassified to conform to the 2005 presentation.

NOTE 2. REAL ESTATE

For the quarter ended March 31, 2005, IORI did not sell any properties.

In 2004, IORI sold the following property:

Property	Location	Sq.Ft.	Sales Price	Net Cash Received	Debt Discharged	Gain on Sale
<i>First Quarter</i>						
<i>Apartment Building</i>						
	San Antonio,	88,957				
Treehouse	TX	Sq.Ft.	\$ 5,400	\$ 1,100	\$ 3,747	\$ 3,257

NOTE 3. NOTES AND INTEREST RECEIVABLE

Junior Mortgage Loans. Junior mortgage loans are loans secured by mortgages that are subordinate to one or more prior liens either on the fee or a leasehold interest in real estate. Recourse on the loans ordinarily includes the real estate which secures the loan, other collateral and personal guarantees of the borrower.

On September 30, 2004, a Secured Promissory Note in the amount of \$1,222,500 given by Unified Housing Foundation, Inc. ("UHF") for Unified Housing of Parkside Crossing, LLC to Regis Realty I, LLC ("Regis I") and the accrued interest receivable of \$112,878 were assigned from Regis I to IORI as a paydown in the amount of \$1,335,378 of certain intercompany receivables.

On September 30, 2004, a Secured Promissory Note in the amount of \$1,053,616 given by UHF for Unified Housing of Temple, LLC to Regis I and the accrued interest receivable of \$98,338 were assigned from Regis I to IORI as a paydown in the amount of \$1,151,954 of certain intercompany receivables.

On September 30, 2004, a Secured Promissory Note in the amount of \$835,658 given by UHF for Unified Housing of Terrell, LLC to Regis I and the accrued interest receivable of \$80,223 were assigned from Regis I to IORI as a paydown in the amount of \$915,881 of certain intercompany receivables.

On September 30, 2004, a Secured Promissory Note in the amount of \$1,770,000 given by UHF for Housing for Seniors of Lewisville, LLC to Regis I and the accrued interest receivable of \$174,640 were assigned from Regis I to IORI as a paydown in the amount of \$1,944,640 of certain intercompany receivables.

On May 24, 2004, a Secured Promissory Note in the amount of \$2,990,000 given by UHF for Unified Housing of McKinney, LLC ("UHM") to Transcontinental Eldorado, Inc. was assigned from Transcontinental Realty Investors, Inc. ("TCI") to IORI as a partial payment for TCI's repurchase of 100% of the outstanding common shares of Transcontinental Treehouse Corporation ("Treehouse-IR") from IORI.

On December 30, 2003, a Secured Promissory Note in the amount of \$6,363,360 given by Housing for Seniors of Humble, LLC (Humble) to NLP Lakeshore Villas, LLC (NLP) was assigned from American Realty Investors, Inc. (ARI) to IORI as a paydown in the amount of \$6,363,360 of certain intercompany receivables.

On December 30, 2003, a Secured Promissory Note in the amount of \$2,000,000 given by Humble to NLP was assigned from ARI to IORI as additional paydown in the amount of \$2,000,000 of certain intercompany receivables. On October 14, 2003, IORI purchased, sold, and conveyed an office building known as One Hickory Centre, and sold 202 acres of unimproved real property known as the Travelers Land in Dallas County, Texas to Encino Executive Plaza, Ltd. The sale price for One Hickory Centre was \$12,200,000 and Encino Executive Plaza, Ltd. executed a wrap-around promissory note in the amount of \$11,973,025 payable to the order of IORI secured by a Deed of Trust encumbering One Hickory Centre. The remaining difference of which was as a result of prorations and various expenses paid by IORI in connection with the closing of the transaction. The note bears interest at 5.5% per annum. The sale price for the Travelers Land was \$25,000,000. At closing, Encino Executive Plaza, Ltd. executed an all inclusive wrap-around promissory note payable to the order of IORI in the principal amount of \$22,801,987 secured by a Deed of Trust covering the Travelers Land sold and delivered cash to IORI in the amount of \$1,946,715. As with the prior transaction, the difference between the purchase price and the promissory note represented adjustments for various prorations. The note bears interest at 5.5% per annum. Subsequently, IORI made a loan to Encino Executive Plaza, Ltd. in the amount of \$1,567,232 payable upon demand or if no demand is made prior thereto on June 30, 2006 with a market rate of interest. Encino Executive Plaza, Ltd. executed and delivered a promissory note payable to the order of IORI in the stated principal amount of \$1,567,232. The note bears interest at 5.5% per annum.

NOTE 4. RECEIVABLE FROM AND PAYABLE TO AFFILIATES

Related Party. On September 19, 2002, IORI's Board of Directors authorized the Chief Financial Officer of the Company to advance funds either to or from the Company, through the advisor without interest, in an amount up to \$5.0 million on the condition that such advances shall be repaid in cash or transfers of assets within 90 days. From time-to-time, IORI and its affiliates and related parties have made unsecured advances to each other to fund their respective operations, which generally have not had specific repayment terms and have been reflected in IORI's financial statements as other assets. At March 31, 2005 and 2004, IORI held a receivable of \$261,000 from TCI. IORI had payables of \$1.5 million and \$1.3 million to SWI at March 31, 2005 and December 31, 2004, respectively. See also NOTE 6. RELATED PARTY TRANSACTIONS.

NOTE 5. NOTES AND INTEREST PAYABLE

In April 2002, the Company transferred all of its residential properties to partnerships formed with Metra Capital LLC (Metra). The properties included the 60-unit Brighton Court, the 92-unit Del Mar, the 68-unit Enclave, the 280-unit Meridian, the 57-unit Signature, the 114-unit Sinclair, located in Midland, Texas, and the 106-unit Treehouse, located in San Antonio, Texas. Innovo Realty, Inc., a subsidiary of Innovo Group, Inc. (Innovo) is a limited partner in the partnerships that purchased the properties. A former director of ARI, a related party, controlled approximately 11.67% of the outstanding common stock of Innovo. The transfer constituted 23% of the total assets of IORI as of December 31, 2001. The transfer price for the properties totaled \$26.2 million, of which the Company received \$5.3 million in cash after the payment of \$15.9 million in debt and various closing costs. Management determined to account for the transaction as a refinancing transaction (rather than a sale) in accordance with SFAS No. 66,

Accounting for Sales of Real Estate. At the time of the transaction in April 2002, ARI was a related party to the Company by virtue of ARI's subsidiaries' ownership of approximately 28.5% of the then outstanding common stock of the Company, and the fact that ARI and the Company had the same persons as executive officers. The compensation price for the properties transferred totaled \$26.2 million and possible additional contingent consideration depending upon the sale price of the properties by the Metra Partnerships. The Company also received \$5.2 million in value of 8% in non-recourse, non-convertible preferred stock of Innovo. Based upon the prospect of additional consideration, ultimate continued involvement through the preferred stock and the related-party nature of the former ARI director's involvement, as well as the Company retaining a right to approve the price of any ultimate sale by a Metra partnership of the properties, and a process by which the Company effectively guaranteed a preferential return to the Metra investors, management determined that the transaction must be classified as a financing transaction and not a sale. The Company continued to be able to exert control over the Metra partnerships, and no sale was recorded. The Treehouse

property was subsequently sold to a non-related party

in February 2004, and all of its debts have been repaid to the lenders at the time of the sale. During August 2004, certain entities, including the Company, instituted an action in a Texas state court against Innovo and Metra and others over the process, as well as distribution questions. During April 2005, a resolution of the litigation occurred settling all liabilities remaining from the original partnership arrangements which included a return of the Metra investor equity, prepayment of prospective asset management fees and miscellaneous fees and transaction costs from the Company and the other plaintiffs as a payment of the Preferential Return along with the delegation of management to another entity. Of the payment made, the Company recognized expense of \$56,000 and a reduction of \$41,476,000 in liabilities during the second quarter of 2005.

NOTE 6. RELATED PARTY TRANSACTIONS

On September 30, 2004, a Secured Promissory Note in the amount of \$1,222,500 given by Unified Housing Foundation, Inc. (UHF) for Unified Housing of Parkside Crossing, LLC to Regis Realty I, LLC (Regis I) and the accrued interest receivable of \$112,878 were assigned from Regis I to IORI as a paydown in the amount of \$1,335,378 of certain intercompany receivables.

On September 30, 2004, a Secured Promissory Note in the amount of \$1,053,616 given by UHF for Unified Housing of Temple, LLC to Regis I and the accrued interest receivable of \$98,338 were assigned from Regis I to IORI as a paydown in the amount of \$1,151,954 of certain intercompany receivables.

On September 30, 2004, a Secured Promissory Note in the amount of \$835,658 given by UHF for Unified Housing of Terrell, LLC to Regis I and the accrued interest receivable of \$80,223 were assigned from Regis I to IORI as a paydown in the amount of \$915,881 of certain intercompany receivables.

On September 30, 2004, a Secured Promissory Note in the amount of \$1,770,000 given by UHF for Housing for Seniors of Lewisville, LLC to Regis I and the accrued interest receivable of \$174,640 were assigned from Regis I to IORI as a paydown in the amount of \$1,944,640 of certain intercompany receivables.

On May 24, 2004, a Secured Promissory Note in the amount of \$2,990,000 given by UHF for UHM to Transcontinental Eldorado, Inc. was assigned from TCI to IORI as a partial payment for TCI's repurchase of 100% of the outstanding common shares of Treehouse-IR from IORI.

On December 30, 2003, a Promissory Note in the amount of \$6.3 million given by Humble to NLP was assigned from ARI to IORI. On December 30, 2003, a Promissory Note in the amount of \$2.0 million given by Humble to NLP was assigned from ARI to IORI. These assignments were payments in the amount of \$8.3 million on certain intercompany receivables due to IORI.

On September 19, 2002, IORI's Board of Directors authorized the Chief Financial Officer of the Company to advance funds either to or from the Company, through the advisor, in an amount up to \$5.0 million on the condition that such advances shall be repaid in cash or transfers of assets within 90 days.

The following table reconciles the beginning and ending balances of Accounts Receivable from Affiliates as of March 31, 2005.

	SWI	TCI
Balance, December 31, 2004 (as restated)	(1,248)	\$ 261
Cash transfers	553	
Cash repayments	(592)	
Other additions		
Other repayments (as restated)	(210)	
Balance, March 31, 2005 (as restated)	(1,497)	\$ 261

Returns on Metra Properties. As described in Note 5, IORI sold all of its residential properties during 2002 to partnerships controlled by Metra. The partnership agreement for each of these partnerships states that the Metra Partners, as defined, receive cash flow distributions at least quarterly in an amount sufficient to provide them with a fifteen percent cumulative compounded annual rate of return on their invested capital, as well as a cumulative annual amount of 0.50% of the average outstanding balance of the mortgage indebtedness secured by any of these residential

properties. These distributions to the Metra Partners are to have priority over distributions to any of the

other partners. See also ITEM 1. LEGAL PROCEEDINGS in PART II. OTHER INFORMATION concerning resolution of other litigation and a reduction of liabilities of \$1,476,000.

NOTE 7. OPERATING SEGMENTS

Significant differences among the accounting policies of the operating segments as compared to the Consolidated Financial Statements principally involve the calculation and allocation of general and administrative expenses. Management evaluates the performance of the operating segments and allocates resources to each of them based on their operating income and cash flow. Items of income that are not reflected in the segments are interest and equity in partnerships totaling \$965,000 and \$579,000 for 2005 and 2004, respectively. Expenses that are not reflected in the segments are general and administrative expenses, advisory fees, and net income fees totaling \$321,000 and \$678,000 for 2005 and 2004, respectively. Excluded from operating segment assets are assets of \$59.8 million at March 31, 2005 and \$52.8 million at March 31, 2004, which are not identifiable with an operating segment. There are no intersegment revenues and expenses and all business is conducted in the United States. Presented below is the operating income and assets of each operating segment.

Three Months Ended March 31, 2005 (Restated)				
	Land	Commercial Properties	Apartments	Total
Rents	\$	\$ 322	\$ 1,207	\$ 1,529
Property operating expenses		211	610	821
Operating income (loss)	\$	\$ 111	\$ 597	\$ 708
Depreciation	\$	\$ 66	\$ 111	\$ 177
Interest	221	326	324	871
Real estate improvements		45		45
Assets		12,979	18,258	31,237

Three Months Ended March 31, 2004 (Restated)				
	Land	Commercial Properties	Apartments	Total
Rents	\$	\$ 722	\$ 1,414	\$ 2,136
Property operating expenses		388	823	1,211
Operating income (loss)	\$	\$ 334	\$ 591	\$ 925
Depreciation	\$	\$ 188	\$ 154	\$ 342
Interest	325	324	469	1,118
Real estate improvements				
Assets	44	21,917	26,149	48,110

NOTE 8. ADVISORY FEES, PROPERTY MANAGEMENT, ETC.

Revenue, fees and cost reimbursements to its advisors and affiliates for the three months ended:

	For the Three Months Ended March 31, 2005 (Restated)		2004 (Restated)	
Fees				
Advisory	\$	166	\$	192
Net income		24		215

Property and construction management and leasing commission	29	32
	\$ 219	\$ 439
Cost reimbursements	\$ 19	\$ 19

NOTE 9. DISCONTINUED OPERATIONS

Effective January 1, 2002, IORI adopted Financial Accounting Standards No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS 144), which established a single accounting model for the impairment

or disposal of long-lived assets including discontinued operations. This statement requires that the operations related to properties that have been sold, or properties that are intended to be sold, be presented as discontinued operations in the statement of operations for all periods presented, and the properties intended to be sold are to be designated as held for sale on the balance sheet. In the event of a future asset sale, IORI is required to reclassify portions of previously reported operations to discontinued operations within the Statements of Operations. No property was sold during the three months ended March 31, 2005. The following table summarizes revenue and expense information for the properties sold.

	For the Three Months Ended March 31,	
	2005	2004
Revenue		
Rental	\$	\$ 168
Property Operations		172
Operating (loss)/income		(4)
Expenses		
Interest		119
Depreciation		5
Total expenses		124
Net (loss)/income from discontinued operations before gains on sale of operations		(128)
Gain on sale of operations		3,257
Net income from discontinued operations	\$	\$ 3,129

Discontinued operations have not been segregated in the consolidated statement of cash flows. Therefore, amounts for certain captions will not agree with respective consolidated statements of operations.

NOTE 10. COMMITMENTS AND CONTINGENCIES

Liquidity. Management anticipates that IORI will generate excess cash from operations in 2005 due to increased rental rates and occupancy at its properties, however, such excess may not be sufficient to discharge all of IORI's debt obligations as they mature. Management may selectively sell income producing assets, refinance real estate and/or incur additional borrowings against real estate to meet its cash requirements.

Other Litigation. IORI is also involved in various other lawsuits arising in the ordinary course of business.

Management is of the opinion that the outcome of these lawsuits will have no material impact on the Company's financial condition, results of operations or liquidity.