

BERKSHIRE INCOME REALTY INC  
Form 10-K  
March 31, 2010

United States  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

Form 10-K

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

For the fiscal year ended December 31, 2009

or

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

Commission File number 001-31659

Berkshire Income Realty, Inc.

State of Incorporation – Maryland  
Internal Revenue Service – Employer Identification No. 32-0024337  
One Beacon Street, Boston, Massachusetts 02108  
(617) 523-7722

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

| Title of Class                                    | Name of each exchange on which registered |
|---|---|
| Series A 9% Cumulative Redeemable Preferred Stock | NYSE Amex                                 |

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 Section 15(d) of the 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 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  No

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Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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.

Large Accelerated Filer  Non-accelerated filer   
Accelerated Filer  Smaller reporting  
company

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

Aggregate market value of voting and non-voting common equity held by non-affiliates: Not applicable.

There were 1,406,196 shares of Class B common stock outstanding as of March 31, 2010.

There are no documents required to be incorporated by reference to this Annual Report on Form 10K.

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## SPECIAL NOTE REGARD FORWARD-LOOKING STATEMENTS

Certain statements contained in this report, including information with respect to our future business plans, constitute “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “33 Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “34 Act”). For this purpose, any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements, subject to a number of risks and uncertainties that could cause actual results to differ significantly from those described in this report. These forward-looking statements include statements regarding, among other things, our business strategy and operations, future expansion plans, future prospects, financial position, anticipated revenues or losses and projected costs, and objectives of management. Without limiting the foregoing, the words “may,” “will,” “should,” “could,” “expects,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential” or “continue” or the ne terms and other comparable terminology are intended to identify forward-looking statements. There are a number of important factors that could cause our results to differ materially from those indicated by such forward-looking statements. These factors include, but are not limited to, changes in economic conditions generally and the real estate and bond markets specifically, legislative/regulatory changes (including changes to laws governing the taxation of real estate investment trusts (“REITs”)), possible sales of assets, the acquisition restrictions placed on the Company by an affiliated entity Berkshire Multifamily Value Fund II, LP, (“BVF II” or “Fund II”), availability of capital, interest rates and interest rate spreads, changes in accounting principles generally accepted in the United States of America (“GAAP”) and policies and guidelines applicable to REITs, those factors set forth herein in Part I, Item 1A. “Risk Factors” and other risks and uncertainties as may be detailed from time to time in our public announcements and our reports filed with the Securities and Exchange Commission (the “SEC”).

The risks listed here are not exhaustive. Other sections of this report may include additional factors that could adversely affect our business and financial performance. Moreover, we operate in a competitive and rapidly changing environment. New risk factors emerge from time to time and it is not possible for management to predict all such risks factors, nor can it assess the impact of all such risk factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. Given these risks and uncertainties, undue reliance should not be placed on forward-looking statements as a prediction of actual results.

As used herein, the terms “we”, “us”, “BIR” or the “Company” refer to Berkshire Income Realty, Inc., a Maryland corporation incorporated on July 19, 2002. The Company is in the business of acquiring, owning, operating and renovating multifamily apartment communities. Berkshire Property Advisors, L.L.C. (“Berkshire Advisor” or “Advisor”) is an affiliated entity we have contracted with to make decisions relating to the day-to-day management and operation of our business, subject to the Board of Directors (“Board”) oversight. Refer to Part III, Item 13 – Certain Relationships and Related Transactions and Director Independence and Notes to the Consolidated Financial Statements, Note 12 – Related Party Transactions of this Form 10-K for additional information about the Advisor.

## PART I

### ITEM 1. BUSINESS

#### Executive Summary

During 2009, BIR continued to manage its property holdings with a focus of maximizing operating revenues and minimizing operating expenses in an effort to maximize cash flows of the portfolio. The capital and credit markets

have had a restrictive effect on the number of transactions taking place in the real estate industry and even though the Company continued to consider acquisition and disposition opportunities as they presented themselves, only one acquisition was completed during 2009. Glo Apartments (“Glo”), a Class A mid-rise development in Los Angeles, California was acquired in a joint venture of which the Company owns approximately 90%. Glo was acquired for \$47,500,000 and the transaction included the assumption of debt on the property, which also totaled \$47,500,000. Additionally, due to changes in the structure of the Leggat McCall Hingham Mezzanine Loan LLC, (the “Mezzanine Loan LLC”) the Company decided to distribute its investment in the Mezzanine Loan LLC to KRF Company, L.L.C. (“KRF Company”), an affiliate of the Company, the majority common interest holder of Berkshire Income Realty – OP, L.P. (the “Operating Partnership”) to avoid any potential negative implications on the Company’s status as a REIT.

During 2009 the Company continued to implement its ongoing strategy of assessing its mortgage debt to aggressively finance, refinance and add supplemental debt to its portfolio to help minimize the effects of rising mortgage interest rates and maximize the cash available for capital investments. While the capital and credit markets continue to provide challenges, the Company has been successful in obtaining two supplemental loans, with favorable terms, totaling \$7,081,000, drawing approximately \$12,435,000 on a construction loan available for a development project and assumed primary and supplemental debt totaling \$47,500,000 as part of the Glo joint venture acquisition. Additionally the Company has secured favorable replacement financing on a loan that matured during 2009 and expects to close on the new mortgage in the first quarter of 2010.

The Company applied great focus to maintaining occupancy levels at all properties throughout the portfolio in an effort to maximize operating revenue and cash. The occupancy levels remained stable in the mid 90% range for most properties which approximates average occupancy levels from the prior year at the Company’s Same Portfolio Properties (“Same Store”). Occupancy levels benefited from the Company’s rental rate setting strategy, which during the current year, attempts to balance occupancy with rental rate pressure from competition to achieve the highest occupancy levels possible in the continued challenging economy. As in past years when the rental market exhibits signs of softness, BIR has offered short-term rental concessions to new and renewing tenants at properties within markets experiencing the slowdown to maintain occupancy without producing significant fluctuations in market rental rates. The Company utilizes revenue management software at most properties in the portfolio which has proven beneficial in the process of maximizing rental revenue.

The Company continues to employ a strategy of increasing the value of its portfolio by implementing property management efficiencies, physical asset improvements at its properties and replacement of existing properties with higher quality assets through acquisitions and dispositions. The Company’s efforts executing these strategies continued to provide the desired operating results during the year and partially offset the negative effects, such as decreasing market rents, resulting from the challenging economic operating environment. Examples of successful initiatives undertaken during 2009 include maintaining high occupancy levels across the portfolio, ongoing renovation projects at certain properties including projects at mid-rise tower properties Hampton House in Towson, Maryland and Executive House in Philadelphia, Pennsylvania and the addition of the newly developed Class A property Glo in Los Angeles, California. The high occupancy has helped maintain property revenue and support net operating results, the renovation of the mid-rise towers ensure these existing properties are the most desirable they can be to prospective tenants in markets challenged by the economy. These value-adding initiatives are instituted by management while it balances the maximization of cash flows and the judicious investment of funds in qualified projects during these challenging economic conditions.

In 2010, while the economic environment shows some signs of improving, the Company will continue to employ adjustments made to our operating model in order to manage the portfolio through these sustained challenging economic times. The operating model adjustments employed have yielded positive results during 2009 and it is our

intention to continue to focus on day to day operations in an effort to maintain occupancies and maximize net operating income. We feel our current focus on operations positions the Company to take advantage of improvements in operating conditions as the sustained economic downturn abates and improvement in the national economy is realized. The Company will continue to take advantage of acquisition and disposition investment opportunities as they become available and that meet the desired investment parameters of the portfolio. The Company's investment strategy will continue to focus on transactions that yield higher quality properties utilizing sourcing strategies that include market, non-market/seller direct, bank and lender owned real estate and foreclosure auctions within continued limitations of the credit and equity markets. The Company will consider placing funds, as available, in qualifying investment opportunities in the form of acquisition of new properties, property development projects, renovation of established properties and other qualifying investments including the acquisition of debt secured by real estate. Currently, the Company is not marketing or considering the sale of any properties in the portfolio but will reassess its plans if markets adjust during the year.

## BUSINESS

In 2002, the Company filed a registration statement on Form S-11 with the SEC with respect to its offers (the “Offering”) to issue its 9% Series A Cumulative Redeemable Preferred Stock (“Preferred Shares”) in exchange for interests (“Interests”) in various mortgage funds (collectively, the “Mortgage Funds”). For each Interest in the Mortgage Funds validly tendered and not withdrawn in the Offering, the Company offered to issue its Preferred Shares based on an exchange ratio applicable to each Mortgage Fund. The registration statement was declared effective on January 9, 2003. Offering costs incurred in connection with the Offering have been reflected as a reduction of Preferred Shares reflected in the financial statements of the Company. On April 4, 2003 and April 18, 2003, the Company issued 2,667,717 and 310,393 Preferred Shares, respectively, with a \$25.00 liquidation preference per share. Simultaneously with the completion of the Offering on April 4, 2003, KRF contributed its ownership interests in five multifamily apartment communities (the “Properties”) to our operating partnership, Berkshire Income Realty – OP, L.P. (the “Operating Partnership”), in exchange for common limited partner interests in the Operating Partnership. KRF Company then contributed an aggregate of \$1,283,213, or 1% of the fair value of the total net assets of the Operating Partnership, to the Company, which together with the \$100 contributed prior to the Offering, resulted in the issuance of 1,283,313 shares of common stock of the Company to KRF Company. This amount was contributed by the Company to its wholly owned subsidiary, BIR GP, L.L.C., who then contributed the cash to the Operating Partnership in exchange for the sole general partner interest in the Operating Partnership.

The Company’s financial statements include the accounts of the Company, its subsidiary, the Operating Partnership, as well as the various subsidiaries of the Operating Partnership. The Company owns preferred and general partner interests in the Operating Partnership. The remaining common limited partnership interests in the Operating Partnership owned by KRF Company and affiliates are reflected as Noncontrolling Interest in Operating Partnership in the financial statements of the Company.

On February 24, 2009, the Company, through a newly formed subsidiary, BIR Glo, L.L.C. (“BIR Glo”), entered into the BIR Holland JV, LLC joint venture agreement (“JV BIR/Holland”) with Holland Glo, LLC (“Holland Glo”), an unrelated third party, to acquire 89.955% of the ownership interests in a 201 unit multifamily mid-rise apartment community in Los Angeles, California. The purchase is consistent with the Company’s desire to acquire well located multifamily apartment communities at attractive prices. The purchase price of \$47,500,000 and related closing costs consisted of a capital commitment of \$12,580,314 plus the assumption of the outstanding mortgage debt secured by the property. As part of the total capital commitment, the Company has committed \$12,210,000 to JV BIR/Holland by providing two irrevocable letters of credit for the benefit of JV BIR/Holland in lieu of funding its capital obligations at closing. The letters of credit are backed by cash which is classified as restricted cash on the balance sheet at December 31, 2009. The purchase was subject to normal operating pro rations. As of June 30, 2009, the purchase price allocation was final and no further adjustment is contemplated.

On December 30, 2009, as part of a special distribution to common stockholders in the amount of \$1,025, the Company distributed its interest in the Leggat McCall Hingham Mezzanine Loan LLC, a Massachusetts Limited Liability Company to the common interest holder of the Operating Partnership. The interests were valued at \$1,000 at the time of distribution. The remaining portion of the special distribution in excess of the \$1,000, or \$25, was distributed pro-ratably to the two remaining common stockholders. Prior to the distribution, the Company had been required to recognize impairment charges on the investment which represented other-than-temporary declines in the fair value of the investment below the carrying value. The carrying value of the investment prior to distribution was \$0.

The Company does not have any employees. Its day-to-day business is managed by Berkshire Advisor, an affiliate of KRF Company, the holder of the majority of our common stock, which has been retained pursuant to the advisory services agreement described under Part III, Item 13 – Certain Relationships and Related Transactions and Director



Independence. Our properties were managed by BRI OP Limited Partnership pursuant to property management agreements described under Part III, Item 13 – Certain Relationships and Related Transactions and Director Independence until December 31, 2004. As of January 1, 2005, Berkshire Advisor assumed property management responsibilities under the various property management agreements.

Our principal executive offices are located at One Beacon Street, Suite 1500, Boston, Massachusetts 02108 and our telephone number at that address is (617) 523-7722.

We are required to file annual, quarterly, and current reports, and other documents with the SEC under the Securities Exchange Act of 1934, as amended. The public may read and copy any materials that we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. Also, the SEC maintains an Internet website that contains reports, proxy and information statements, and other information regarding issuers, including the Company, that file electronically with the SEC. The public can obtain any documents that we file with the SEC at <http://www.sec.gov>. The Company voluntarily provides, free of charge, paper or electronic copies of all filings upon request. Additionally, all filings are available free of charge on our website. Our Internet address is <http://www.berkshireincomerealty.com>.

## ITEM 1A. RISK FACTORS

### RISK FACTORS

The following risk factors should be read carefully in connection with evaluating our business and the forward-looking statements contained in this report and other statements we or our representatives make from time to time. Any of the following risks could materially adversely affect our business, our operating results, our financial condition and the actual outcome of matters as to which forward-looking statements are made in this report. In connection with the forward-looking statements that appear in this report, you should also carefully review the cautionary statement referred to herein under “Special Note Regarding Forward-Looking Statements.”

#### Risk Factors Relating to Our Business

Operating risks and lack of liquidity may adversely affect our investments in real property.

Varying degrees of risk affect real property investments. The investment returns available from equity investments in real estate depend in large part on the amount of income earned and capital appreciation generated by the related properties as well as the expenses incurred. If our assets do not generate revenue sufficient to meet operating expenses, including debt service and capital expenditures, our income and ability to service our debt and other obligations could be adversely affected. Some significant expenditures associated with an investment in real estate, such as mortgage and other debt payments, real estate taxes and maintenance costs, generally are not reduced when circumstances cause a reduction in revenue from the investment. In addition, income from properties and real estate values are also affected by a variety of other factors, such as interest rate levels, governmental regulations and applicable laws and the availability of financing.

Equity real estate investments, such as ours, are relatively illiquid. This illiquidity limits our ability to vary our portfolio in response to changes in economic or other conditions. We cannot be certain that we will recognize full value for any property that we are required to sell for liquidity reasons. Our inability to respond rapidly to changes in the performance of our investments could adversely affect our financial condition and results of operations.

Our properties are subject to operating risks common to apartment ownership in general. These risks include: our ability to rent units at the properties; competition from other apartment communities; excessive building of

comparable properties that might adversely affect apartment occupancy or rental rates; increases in operating costs due to inflation and other factors, which increases may not necessarily be offset by increased rents; increased affordable housing requirements that might adversely affect rental rates; inability or unwillingness of residents to pay rent increases; and future enactment of rent control laws or other laws regulating apartment housing, including present and possible future laws relating to access by disabled persons or the right to convert a property to other uses, such as condominiums or cooperatives. If operating expenses increase, the local rental market may limit the extent to which rents may be increased to meet increased expenses without decreasing occupancy rates. If any of the above were to occur, our ability to meet our debt service and other obligations could be adversely affected.

In order to achieve or enhance our desired financial results we may make investments that involve more risk than market rate core and core-plus acquisitions.

In many of the markets where we may seek to acquire multifamily apartment communities we may face significant competition from well capitalized real estate investors, including private investors, publicly traded REITs and institutional investors. This competition can result in sellers obtaining premiums on their real estate, which sometimes pushes the price beyond what we may consider to be a prudent purchase price. To mitigate these factors, our sourcing strategy includes non-market/seller direct deals, bank and lender owned real estate and foreclosure auctions. Some of these acquisition strategies can involve more risk than market rate core and core-plus acquisitions, but may allow the Company to realize higher returns if the underlying assumptions are achieved. However, if the underlying assumptions are not achieved, the additional risks associated with these broader sourcing strategies could result in lower profits, or higher losses, than would be realized in market rate acquisitions.

We may renovate our properties, which could involve additional operating risks.

We expect to be working on the renovation of multifamily properties that we may acquire. We may also acquire completed multifamily properties. The renovation of real estate involves risks in addition to those involved in the ownership and operation of established multifamily properties, including the risks that specific project approvals may take longer to obtain than expected, that construction may not be completed on schedule or budget and that the properties may not achieve anticipated rent or occupancy levels.

We may not be able to pay the costs of necessary capital improvements on our properties, which could adversely affect our financial condition.

We anticipate funding any required capital improvements on our properties using cash flow from operations, cash reserves or additional financing if necessary. However, the anticipated sources of funding may not be sufficient to make the necessary improvements. If our cash flow from operations and cash reserves proves to be insufficient, we might have to fund the capital improvements by borrowing money. If we are unable to borrow money on favorable terms, or at all, we may not be able to make necessary capital improvements, which could harm our financial condition.

Our tenants-in-common or future venture partners may have interests or goals that conflict with ours, which may restrict our ability to manage some of our investments and adversely affect our results of operations.

One or more of the properties that we own, or properties we acquire in the future may be owned through tenancies-in-common or by venture partnerships between us and the seller of the property, an independent third party or another investment entity sponsored by our affiliates. Our investment through tenancies-in-common or in venture partnerships that own properties may, under certain circumstances, involve risks that would not otherwise be present. For example, our tenant-in-common or venture partner may experience financial difficulties and may at any time have economic or business interests or goals that are inconsistent with our economic or business interests or our policies or goals. In addition, actions by, or litigation involving, any tenant-in-common or venture partner might subject the property owned through a tenancy-in-common or by the venture to liabilities in excess of those

contemplated by the terms of the tenant-in-common or venture agreement. Also, there is a risk of impasse between the parties since generally either party may disagree with a proposed transaction involving the property owned through a tenancy-in-common or venture partnership and impede any proposed action, including the sale or other disposition of the property.

Our inability to dispose of a property we may acquire in the future without the consent of a tenant-in-common or venture partner would increase the risk that we could be unable to dispose of the property, or dispose of it promptly, in response to economic or other conditions. The inability to respond promptly to changes in performance of the property could adversely affect our financial condition and results of operations.

We may face significant competition and we may not compete successfully.

We may face significant competition in seeking investments including competition from our affiliate BVF II. Acquisition restrictions placed on the Company by BVF II are applicable only during the investment period of the Fund. The investment period of BVF II ends in October of 2011. We may be unable to acquire a desired property because of competition from other well capitalized real estate investors, such as publicly traded REITs, institutional investors and other investors, including companies that may be affiliated with the Advisor. When we are successful in acquiring a desired property, competition from other real estate investors may significantly increase our purchase price. Some of our competitors may have greater financial and other resources than us and may have better relationships with lenders and sellers, and we may not be able to compete successfully for investments.

We plan to borrow, which may adversely affect our return on our investments and may reduce income available for distribution.

Where possible, we may seek to borrow funds to increase the rate of return on our investments and to allow us to make more investments than we otherwise could. Borrowing by us presents an element of risk if the cash flow from our properties and other investments is insufficient to meet our debt service and other obligations. A property encumbered by debt increases the risk that the property will operate at a loss and may ultimately be forfeited upon foreclosure by the lender. Loans that do not fully amortize during the term, such as “bullet” or “balloon-payment” loans, present refinancing risks. Variable rate loans increase the risk that the property may become unprofitable in adverse economic conditions. Loans that require guaranties, including full principal and interest guaranties, master leases, debt service guaranties and indemnities for liabilities such as hazardous waste, may result in significant liabilities for us.

Under our current investment policies, we may not incur indebtedness if by doing so our ratio of debt to total assets, at fair market value, exceeds 75%. However, we may reevaluate our borrowing policies from time to time, and the Board may change our investment policies without the consent of our stockholders. At December 31, 2009 and 2008, our ratio of debt to total assets, at fair value, was 74.41% and 70.15%, respectively.

Our insurance on our real estate may not cover all losses.

We carry comprehensive liability, fire, terrorism, extended coverage and rental loss insurance covering all of our properties, with policy specifications and insured limits that we believe are adequate and appropriate under the circumstances. Many insurance carriers are excluding asbestos-related claims and mold remediation-related claims from standard policies, pricing asbestos and mold remediation endorsements at prohibitively high rates or adding significant restrictions to this coverage. Because of our inability to obtain specialized coverage at rates that correspond to the perceived level of risk, we have not obtained insurance for asbestos-related claims or mold remediation-related risks. We continue to evaluate the availability and cost of additional insurance coverage from the insurance market. If we decide in the future to purchase coverage for asbestos or mold remediation insurance, the cost could have a negative impact on our results of operations. If an uninsured loss or a loss in excess of insured limits occurs on a property, we could lose our capital invested in the property, as well as the anticipated future revenues from the property and, in the case of debt that is recourse to us, we would remain obligated for any mortgage debt or other financial obligations related to the property. Any loss of this nature could adversely affect us.

Additionally, the policy specifications of our insurance coverage on our properties include deductibles related to an insured loss. The deductibles applicable to an insured loss caused by “Named Storms”, as defined in the insurance policy, which are usually in the form of a hurricane, at certain properties we operate, are higher than deductibles for other insured losses covered by the policy. Specifically, the deductibles for “Named Storms” are based on a percentage of the insured property value with a specific minimum amount. Both the percentage and the related minimum amounts are higher than the standard policy deductibles for insured losses caused by a “Named Storm” in certain higher

risk counties of certain states, including Florida, North Carolina, Texas and Virginia and even higher amounts for insured losses caused by a “Named Storm” in the counties of Dade, Broward and Palm Beach, Florida. Losses resulting from “Named Storms” could adversely affect us.

Environmental compliance costs and liabilities with respect to our real estate may adversely affect our results of operations.

Our operating costs may be affected by our obligation to pay for the cost of complying with existing environmental laws, ordinances and regulations, as well as the cost of complying with future legislation with respect to the assets, or loans collateralized by assets, with environmental problems that materially impair the value of assets. Under various federal, state or local environmental laws, ordinances and regulations, an owner of real property may be liable for the costs of removal or remediation of hazardous or toxic substances located on or in the property. These laws often impose liability without regard to whether the owner knew of, or was responsible for, the presence of the hazardous or toxic substances.

The costs of any required remediation or removal of these substances may be substantial. In addition, the owner’s liability as to any property is generally not limited under these laws, ordinances and regulations and could exceed the value of the property and/or the aggregate assets of the owner. The presence of hazardous or toxic substances, or the failure to remediate properly, may also adversely affect the owner’s ability to sell or rent the property or to borrow using the property as collateral. Under these laws, ordinances and regulations, an owner or any entity who arranges for the disposal of hazardous or toxic substances, such as asbestos, at a disposal facility may also be liable for the costs of any required remediation or removal of the hazardous or toxic substances at the facility, whether or not the facility is owned or operated by the owner or entity. In connection with the ownership of any of our properties, or participation in ventures, or the disposal of hazardous or toxic substances, we may be liable for any of these costs.

Other federal, state and local laws may impose liability for the release of hazardous material, including asbestos-containing materials, into the environment, or require the removal of damaged asbestos containing materials in the event of remodeling or renovation, and third parties may seek recovery from owners of real property for personal injury associated with exposure to released asbestos-containing materials or other hazardous materials. We do not currently have insurance for asbestos-related claims.

Recently there has been an increasing number of lawsuits against owners and managers of multifamily properties alleging personal injury and property damage caused by the presence of mold in residential real estate. Some of these lawsuits have resulted in substantial monetary judgments or settlements. We do not currently have insurance for all mold-related risks. Environmental laws may also impose restrictions on the manner in which a property may be used or transferred or in which businesses may be operated, and these restrictions may require additional expenditures. In connection with the ownership of properties, we may be potentially liable for any of these costs. The cost of defending against claims of liability or remediating contaminated property and the cost of complying with environmental laws could materially adversely affect our results of operations and financial condition.

We have been notified of the presence of asbestos in certain structural elements in our properties, which we are addressing in accordance with various operations and maintenance plans. The asbestos operations and maintenance plans require that all structural elements that contain asbestos not be disturbed. In the event the asbestos containing elements are disturbed either through accident, such as a fire, or as a result of planned renovations at the property, those elements would require removal by a licensed contractor, who would provide for containment and disposal in an authorized landfill. The property managers of our properties have been directed to work proactively with licensed ablation contractors whenever there is any question regarding possible exposure.

We are not aware of any environmental liability relating to our properties that we believe would have a material adverse effect on our business, assets or results of operations. Nevertheless, it is possible that there are material

environmental liabilities of which we are unaware with respect to our properties. Moreover, we cannot be certain that future laws, ordinances or regulations will not impose material environmental liabilities or that the current environmental condition of our properties will not be affected by residents and occupants of our properties, by the uses or condition of properties in the vicinity of our properties, such as leaking underground storage tanks, or by third parties unaffiliated with us.

We face risks associated with climate change regulations.

Growing concerns about the change in the climate has resulted in new laws and regulations that are intended to limit the amount of carbon emission into the atmosphere. The Company believes that the proposal and enactment of such laws and regulations could increase operating costs of the properties, including energy costs for electricity, heating and cooling as well as increased cost of waste removal at our properties. The Company does not currently believe that increased costs, if any, would have a material impact on the results of operations and anticipates that any increased costs would be passed through to our residents by use of the utility recovery programs employed by the Company.

Our failure to comply with various regulations affecting our properties could adversely affect our financial condition.

Various laws, ordinances, and regulations affect multifamily residential properties, including regulations relating to recreational facilities, such as activity centers and other common areas. We believe that each of our properties has all material permits and approvals to operate its business.

Our multifamily residential properties must comply with Title II of the Americans with Disabilities Act (the “ADA”) to the extent that such properties are public accommodations and/or commercial facilities as defined by the ADA. Compliance with the ADA requires removal of structural barriers to handicapped access in certain public areas of our properties where such removal is readily achievable. The ADA does not, however, consider residential properties to be public accommodations or commercial facilities, except to the extent portions of such facilities, such as a leasing office, are open to the public. We believe that our properties comply in all material respects with all current requirements under the ADA and applicable state laws. Noncompliance with the ADA could result in imposition of fines or an award of damages to private litigants. The cost of defending against any claims of liability under the ADA or the payment of any fines or damages could adversely affect our financial condition.

The Fair Housing Act (the “FHA”) requires, as part of the Fair Housing Amendments Act of 1988, apartment communities first occupied after March 13, 1990 to be accessible to the handicapped. Noncompliance with the FHA could result in the imposition of fines or an award of damages to private litigants. We believe that our properties that are subject to the FHA are in compliance with such law. The cost of defending against any claims of liability under the FHA or the payment of any related fines or damages could adversely affect our financial condition.

We face risks associated with property acquisitions.

We intend to acquire additional properties in the future, either directly or by acquiring entities that own properties. These acquisition activities are subject to many risks. We may acquire properties or entities that are subject to liabilities or that have problems relating to environmental condition, state of title, physical condition or compliance with zoning laws, building codes, or other legal requirements. In each case, our acquisition may be without any recourse, or with only limited recourse, with respect to unknown liabilities or conditions.

As a result, if any liability were asserted against us relating to those properties or entities, or if any adverse condition existed with respect to the properties or entities, we might have to pay substantial sums to settle or cure it, which could adversely affect our cash flow and operating results. However, some of these liabilities may be covered by insurance. In addition, we intend to perform customary due diligence regarding each property or entity we acquire. We also intend to obtain appropriate representations and indemnities from the sellers of the properties or entities we acquire, although it is possible that the sellers may not have the resources to satisfy their indemnification obligations if a liability arises. Unknown liabilities to third parties with respect to properties or entities acquired might include: liabilities for clean-up of undisclosed environmental contamination; claims by tenants, vendors or other persons dealing with the former owners of the properties; liabilities incurred in the ordinary course of business; and claims for indemnification by general partners, directors, officers and others indemnified by the former owners of the properties.

We may acquire multifamily apartment communities through foreclosure auctions, which limit our ability to perform due diligence.

One of our acquisition strategies seeks to acquire multifamily apartment communities through foreclosure auctions. Generally when a property is foreclosed on by a lender, there is minimal time between the announcement of foreclosure and the auction to dispose of the property and access to the property for due diligence is either severely limited or unavailable. The lack of time and access for due diligence can result in only limited knowledge of problems, including environmental issues, that are identified after the acquisition has taken place. While the Company generally includes provisions for unforeseen problems into its underwriting models, there is no assurance that these provisions will be sufficient to remediate all of the issues identified after closing. If significant issues are identified after closing, which were not provided for during the underwriting, this sourcing strategy could result in lower profits, or higher losses, than would be realized in market rate acquisitions, where full due diligence is available.

Development risks could affect available capital and operating profitability.

We intend to develop new apartment units on property that we own or may acquire in the future. These development projects are subject to many risks including governmental approvals, which we have no assurance will be obtained. We may develop properties that have problems relating to environmental conditions, compliance with zoning laws, building codes, or other legal requirements or may be subject to unknown liabilities to third parties with respect to undisclosed environmental contamination, claims by vendors or claims by other persons. The cost to construct the projects may require capital in excess of projected amounts and possibly render the economic viability of the project unfeasible. The apartment units in the completed project may command rents and occupancy rates at less than anticipated levels and result in operating expenses at higher than forecasted levels.

We face valuation and liquidity risk.

The Company may invest in real estate and real estate related investments for which no liquid market exists. The market prices for such investments may be volatile and may not be readily ascertainable. In addition, there continues to be significant disruptions in the global capital, credit and real estate markets. These disruptions have led to, among other things, a significant decline in the volume of transaction activity, in the fair value of many real estate and real estate related investments, and a significant contraction in short-term and long-term debt and equity funding sources. This contraction in capital includes sources that the Company may depend on to finance certain investments. The decline in prices of real estate and real estate related investments, as well as the availability of observable transaction data and inputs, may have made it more difficult to determine the fair value of such investments. As a result, amounts ultimately realized by the Company from investments sold may differ from the fair values presented, and the differences could be material.

We face financing risk.

There is no guarantee that the Company's borrowing arrangements or other arrangements for obtaining leverage will continue to be available, or if available, will be available on terms and conditions acceptable to the Company. Unfavorable economic conditions also could increase funding costs, limit access to the capital markets or result in a decision by lenders not to extend credit to the Company. In addition, a decline in market value of the Company's assets may have particular adverse consequences in instances where the Company borrowed money based on the fair value of those assets. A decrease in market value of those assets may result in the lender requiring the Company to post additional collateral or otherwise sell assets at a time when it may not be in the Company's best interest to do so. In the event the Company is required to liquidate all or a portion of its portfolio quickly, the Company may realize significantly less than the value at which it previously recorded those investments. As of December 31, 2009 the Company does not have significant exposure to financing in which the lender can require the



Company to post additional collateral or otherwise sell assets to settle the financing obligations.

We face loan covenant risk.

In the normal course of business, the Company enters into loan agreements with certain lenders to finance its real estate investment transactions. These loan agreements contain, among other conditions, events of default and various covenants and representations. The Company believes it was in compliance with all these covenants during 2009. However, if the lenders determine we were not in compliance, the lenders may decide to curtail or limit extension of credit, and the Company may be forced to repay its loans. For the year ended December 31, 2009, no loan agreements were terminated as a result of non-compliance with covenants. In the event the Company's current credit facilities are not extended and/or the Company is forced to repay its loans, the Company may be required to sell assets at potentially unfavorable prices. In addition, if the Company is required to liquidate all or a portion of its portfolio quickly, the Company may realize significantly less than the value at which it previously recorded those investments.

We face development financing risk.

In order to fund new real estate investments, as well as refurbish and improve existing investments, both the Company as well as potential owners must periodically spend money. The availability of funds for new investments and maintenance of existing investments depends in large measure on capital markets and liquidity factors over which management can exert little control. Events over the past several months, including recent failures and near failures of a number of large financial service companies, have made the capital markets increasingly volatile. As a result, many current and prospective owners are finding financing to be increasingly expensive and difficult to obtain. In addition, such bankruptcies may prevent some projects that are in construction or development from drawing on existing financing commitments, and replacement financing may not be available or may only be available on less favorable terms. Delays, increased costs and other impediments to restructuring such projects may affect our ability to execute our investment strategy in connection with such projects. This contraction in capital sources has not had a significant adverse impact on the Company's liquidity position, results of operations and financial condition but may adversely impact the Company if market conditions continue to deteriorate.

We face diversification risk.

The assets of the Company are concentrated in the real estate sector. Accordingly, the investment portfolio of the Company may be subject to more rapid change in value than would be the case if the Company were to maintain a wide diversification among investments or industry sectors. Furthermore, even within the real estate sector, the investment portfolio may be relatively concentrated in terms of geography and type of real estate investment. This lack of diversification may subject the investments of the Company to more rapid change in value than would be the case if the assets of the Company were more widely diversified.

We face concentrations of market, interest rate and credit risk.

Concentrations of market, interest rate and credit risk may exist with respect to the Company's investments and its other assets and liabilities. Market risk is a potential loss the Company may incur as a result of changes in the fair value of its investment. The Company may also be subject to risk associated with concentrations of investments in geographic regions and industries. Interest rate risk includes the risk associated with changes in prevailing interest rates. These derivatives are predominantly used for managing risk associated with the Company's portfolio of investments. Credit risk includes the possibility that a loss may occur from the failure of counterparties or issuers to make payments according to the terms of a contract. The Company's exposure to credit risk at any point in time is generally limited to amounts recorded as assets on the consolidated balance sheet.



### Certain Federal Income Tax Risks

Our failure to qualify as a REIT would result in higher taxes and reduced cash available for distribution to our stockholders.

We intend to operate in a manner to allow us to qualify as a REIT for federal income tax purposes. Although we believe that we have been organized and will operate in this manner, we cannot be certain that we will be able to operate so as to qualify as a REIT under the Tax Code, or to remain so qualified. Qualification as a REIT involves the application of highly technical and complex provisions of the Tax Code for which there are only limited judicial or administrative interpretations. The determination of various factual matters and circumstances not entirely within our control may affect our ability to qualify as a REIT.

The complexity of these provisions and of the applicable income tax regulations under the Tax Code is greater in the case of a REIT that holds its assets through a partnership, as we do. Moreover, our qualification as a REIT depends upon the qualification of certain of our investments as REITs. In addition, we cannot be certain that legislation, new regulations, administrative interpretations or court decisions will not significantly change the tax laws with respect to the qualification as a REIT or the federal income tax consequences of this qualification. We are not aware of any proposal currently being considered by Congress to amend the tax laws in a manner that would materially and adversely affect our ability to operate as a REIT.

If for any taxable year we fail to qualify as a REIT, we would not be allowed a deduction for distributions to our stockholders in computing our taxable income and would be subject to federal income tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. In addition, we would normally be disqualified from treatment as a REIT for the four taxable years following the year of losing our REIT status. This would likely result in significant increased costs to us. Any corporate tax liability could be substantial and would reduce the amount of cash available for distribution to our stockholders and for investment, which in turn could have an adverse impact on the value of, and trading prices for, our publicly traded securities.

Although we intend to operate in a manner designed to qualify as a REIT, future economic, market, legal, tax or other considerations may cause our Board and the holders of our common stock to determine that it is in the best interests of the Company and our stockholders to revoke our REIT election.

We believe that our operating partnership will be treated for federal income tax purposes as a partnership and not as a corporation or an association taxable as a corporation. If the Internal Revenue Service were to determine that our operating partnership were properly to be treated as a corporation, our operating partnership would be required to pay federal income tax at corporate rates on its net income, its partners would be treated as stockholders of the operating partnership and distributions to partners would constitute dividends that would not be deductible in computing the operating partnership's taxable income. In addition, we would fail to qualify as a REIT, with the resulting consequences described above.

REIT distribution requirements could adversely affect our liquidity.

To obtain the favorable tax treatment for REITs qualifying under the Tax Code, we generally are required each year to distribute to our stockholders at least 90% of our real estate investment trust taxable income, determined without regard to the deduction for dividends paid and by excluding net capital gains. We are subject to a 4% nondeductible excise tax on the amount, if any, by which distributions paid by us with respect to any calendar year are less than the sum of: (1) 85% of our ordinary income for the calendar year; (2) 95% of our capital gain net income for the calendar year, unless we elect to retain and pay income tax on those gains; and (3) 100% of our undistributed amounts from prior years.

Failure to comply with these requirements would result in our income being subject to tax at regular corporate rates.

We intend to distribute our income to our stockholders in a manner intended to satisfy the distribution requirement and to avoid corporate income tax and the 4% excise tax. Differences in timing between the recognition of income and the related cash receipts or the effect of required debt amortization payments could require us to borrow money or sell assets to distribute enough of our taxable income to satisfy the distribution requirement and to avoid corporate income tax and the 4% excise tax in a given year.

Legislative or regulatory action could adversely affect holders of our securities.

In recent years, numerous legislative, judicial and administrative changes have been made to the federal income tax laws applicable to investments in REITs and similar entities. Additional changes to tax laws are likely to continue to occur in the future, and we cannot be certain that any such changes will not adversely affect the taxation of a holder of our securities.

### Risk Factors Relating to Our Management

We are dependent on Berkshire Advisor and may not find a suitable replacement at the same cost if Berkshire Advisor terminates the advisory services agreement.

We have entered into a contract with Berkshire Advisor (which we refer to as the advisory services agreement) under which Berkshire Advisor is obligated to manage our portfolio and identify investment opportunities consistent with our investment policies and objectives, as the Board may adopt from time to time.

Although the Board has continuing exclusive authority over our management, the conduct of our affairs and the management and disposition of our assets, the Board initially has delegated to Berkshire Advisor, subject to the supervision and review of our Board, the power and duty to make decisions relating to the day-to-day management and operation of our business. We generally utilize officers of Berkshire Advisor to provide our services and employ only a few individuals as our officers, none of whom are compensated by us for their services to us as our officers. We believe that our success depends to a significant extent upon the experience of Berkshire Advisor's officers, whose continued service is not guaranteed. We have no separate facilities and are completely reliant on Berkshire Advisor, which has significant discretion as to the implementation of our operating policies and strategies. We face the risk that Berkshire Advisor could terminate the advisory services agreement and we may not find a suitable replacement at the same cost with similar experience and ability. However, we believe that so long as KRF Company, which is an affiliate of Berkshire Advisor, continues to own a significant amount of our common stock, Berkshire Advisor will not terminate the advisory services agreement. Although KRF Company currently owns most of our common stock, we cannot be certain that KRF Company will continue to do so.

Our relationship with Berkshire Advisor may lead to general conflicts of interest that adversely affect the interests of holders of our Series A Preferred Stock.

Berkshire Advisor is an affiliate of KRF Company, which owns the majority of our common stock. All of our directors and executive officers, other than our three independent directors, are also officers or directors of Berkshire Advisor. As a result, our advisory services agreement with Berkshire Advisor was not negotiated at arm's-length and its terms, including the fees payable to Berkshire Advisor, may not be as favorable to us as if it had been negotiated with an unaffiliated third party. Asset management fees and acquisition fees for new investments are payable to Berkshire Advisor under the advisory services agreement regardless of the performance of our portfolio and may create conflicts of interest. Conflicts of interest also may arise in connection with any decision to renegotiate, renew or terminate our advisory services agreement. In order to mitigate these conflicts, the renegotiation, renewal or

termination of the advisory services agreement requires the approval of the Audit Committee (which committee is comprised of our three directors who are independent under applicable rules and regulations of the SEC and the NYSE Amex).

Through December 31, 2004, our property manager, an affiliate of Berkshire Advisor, in most cases provided on-site management services for our properties. Our directors who are affiliates of our property manager might be subject to conflicts of interest in their dealings with our property manager. In order to mitigate these conflicts, the renegotiation, renewal or termination of the property management agreements requires the approval of the Audit Committee (which committee is comprised of our three directors who are independent under applicable rules and regulations of the SEC and the NYSE Amex). As of January 1, 2005, Berkshire Advisor assumed the role of property manager for our properties, under the same terms as the agreements with the prior property manager.

Berkshire Advisor and its affiliates may engage in other businesses and business ventures, including business activities relating to real estate or other investments, whether similar or dissimilar to those made by us, or may act as advisor to any other person or entity (including other REITs). The ability of Berkshire Advisor and its officers and employees to engage in these other business activities may reduce the time Berkshire Advisor spends managing us. Berkshire Advisor and its affiliates may have conflicts of interest in the allocation of management and staff time, services and functions among us and its other investment entities presently in existence or subsequently formed. However, under our advisory services agreement with Berkshire Advisor, Berkshire Advisor is required to devote sufficient resources as may be required to discharge its obligations to us under the advisory services agreement.

Our advisory services agreement with Berkshire Advisor provides that neither Berkshire Advisor nor any of its affiliates is obligated to present to us all investment opportunities that come to their attention, even if any of those opportunities might be suitable for investment by us. It is within the sole discretion of Berkshire Advisor to allocate investment opportunities to us as it deems advisable. However, it is expected that, to the extent possible, the resolution of conflicting investment opportunities between us and others will be based upon differences in investment objectives and policies, the makeup of investment portfolios, the amount of cash and financing available for investment and the length of time the funds have been available, the estimated income tax effects of the investment, policies relating to leverage and cash flow, the effect of the investment on diversification of investment portfolios and any regulatory restrictions on investment policies.

We have adopted policies to ensure that Berkshire Advisor does not enter into investments on our behalf involving its affiliates that could be less favorable to us than investments involving unaffiliated third parties. For example, any transaction between us and Berkshire Advisor or any of its affiliates requires the prior approval of the Audit Committee (which committee is comprised of our three directors who are independent under applicable rules and regulations of the SEC and the NYSE Amex). Members of our Audit Committee are also required under our bylaws to be unaffiliated with Berkshire Advisors and its affiliates. We cannot be certain that these policies will be successful in eliminating the influence of any conflicts.

Our Board of Directors has approved investment guidelines for Berkshire Advisor, but might not approve each multifamily residential property investment decision made by Berkshire Advisor within those guidelines.

Berkshire Advisor is authorized to follow investment guidelines adopted from time to time by the Board in determining the types of assets it may decide to recommend to the Board as proper investments for us. The Board periodically reviews our investment guidelines and our investment portfolio. In conducting periodic reviews, the Board relies primarily on information provided by Berkshire Advisor. However, Berkshire Advisor may make investments in multifamily residential property on our behalf within the Board approved guidelines without the approval of the Board.

We may change our investment strategy without stockholder consent, which could result in our making different and potentially riskier investments.

We may change our investment strategy at any time without the consent of our stockholders, which could result in our making investments that are different from, and possibly riskier than, our initial plan to primarily acquire, own and operate multifamily residential properties. In addition, the methods of implementing our investment policies may vary as new investment techniques are developed. A change in our investment strategy may increase our exposure to interest rate and real estate market fluctuations.

## ITEM 1B UNRESOLVED STAFF COMMENTS

None.

## ITEM 2. PROPERTIES

A summary of the multifamily apartment communities in which the Company had an interest as of December 31, 2009 is presented below. Schedule III included in Item 15 to this report contains additional detailed information with respect to individual properties consolidated by the Company in the financial statements contained herein and is incorporated by reference herein.

| Description               | Location                  | Year Acquired | Total Units (Unaudited) | Ownership Interest | 2009 Occupancy (1) (Unaudited) |
|---------------------------|---------------------------|---------------|-------------------------|--------------------|--------------------------------|
| Berkshires of Columbia    | Columbia, Maryland        | 1983          | 316                     | 91.38%             | 95.97%                         |
| Seasons of Laurel         | Laurel, Maryland          | 1985          | 1,088                   | 100.00%            | 96.21%                         |
| Walden Pond/Gables        | Houston, Texas            | 1983/2003     | 556                     | 100.00%            | 90.68%                         |
| Laurel Woods              | Austin, Texas             | 2004          | 150                     | 100.00%            | 93.35%                         |
| Bear Creek                | Dallas, Texas             | 2004          | 152                     | 100.00%            | 93.28%                         |
| Bridgewater               | Hampton, Virginia         | 2004          | 216                     | 100.00%            | 94.18%                         |
| Arboretum                 | Newport News, Virginia    | 2004          | 184                     | 100.00%            | 94.74%                         |
| Reserves at Arboretum     | Newport News, Virginia    | 2009 (2)      | 143                     | 100.00%            | 68.38% (3)                     |
| Silver Hill               | Newport News, Virginia    | 2004          | 153                     | 100.00%            | 93.18%                         |
| Arrowhead                 | Palatine, Illinois        | 2004          | 200                     | 58.00%             | 95.07%                         |
| Moorings                  | Roselle, Illinois         | 2004          | 216                     | 58.00%             | 95.62%                         |
| Country Place I           | Burtonsville, Maryland    | 2004          | 192                     | 58.00%             | 94.90%                         |
| Country Place II          | Burtonsville, Maryland    | 2004          | 120                     | 58.00%             | 94.90%                         |
| Yorktowne                 | Millersville, Maryland    | 2004          | 216                     | 100.00%            | 94.66%                         |
| Berkshires on Brompton    | Houston, Texas            | 2005          | 362                     | 100.00%            | 96.63%                         |
| Riverbirch                | Charlotte, North Carolina | 2005          | 210                     | 100.00%            | 92.57%                         |
| Lakeridge                 | Hampton, Virginia         | 2005          | 282                     | 100.00%            | 94.10%                         |
| Berkshires at Citrus Park | Tampa, Florida            | 2005          | 264                     | 100.00%            | 92.75%                         |
| Briarwood Village         | Houston, Texas            | 2006          | 342                     | 100.00%            | 96.09%                         |
| Chisholm Place            | Dallas, Texas             | 2006          | 142                     | 100.00%            | 96.55%                         |
|                           | Atlanta, Georgia          | 2006          | 375                     | 100.00%            | 93.65%                         |

|                           |                            |      |       |         |        |
|---------------------------|----------------------------|------|-------|---------|--------|
| Standard at Lenox Park    |                            |      |       |         |        |
| Berkshires at Town Center |                            |      |       |         |        |
|                           | Towson, Maryland           | 2007 | 196   | 100.00% | 86.55% |
| Sunfield Lakes            |                            |      |       |         |        |
|                           | Sherwood, Oregon           | 2007 | 200   | 100.00% | 94.03% |
| Executive House           |                            |      |       |         |        |
|                           | Philadelphia, Pennsylvania | 2008 | 302   | 100.00% | 94.64% |
| GLO                       |                            |      |       |         |        |
|                           | Los Angeles, California    | 2009 | 201   | 89.955% | 90.92% |
|                           |                            |      | 6,778 |         |        |

All of the properties in the above table are encumbered by mortgages as of December 31, 2009 with the exception of the Berkshires at Citrus Park property.

As of January 1, 2007, the Company became subject to the revised franchise tax calculation in Texas.

(1) Represents the average year-to-date physical occupancy.

(2) Property was acquired as raw land in 2004. Development of the multifamily apartment community on the land was completed and the property was fully leased during the year ended December 31, 2009.

(3) The average occupancy for The Reserves at Arboretum Place property reflects the lease up of the property after completion of construction in early 2009. The physical occupancy was 96.15% as of December 31, 2009.

### ITEM 3. LEGAL PROCEEDINGS

The Company was party to a legal proceeding initiated by a seller/developer from whom the Company acquired a property in 2005. The dispute involved the interpretation of certain provisions of the purchase and sales agreement related to post acquisition construction activities. Specifically, the purchase and sales agreement provided that if certain conditions were met, the seller/developer would develop a vacant parcel of land contiguous to the acquired property with 18 new residential apartment units (the "New Units") for the benefit of the Company at an agreed-upon price. The purchase and sales agreement also provided the opportunity for the seller/developer to build a limited number of garages (the "Garages") for the existing apartment units for the benefit of the Company at an agreed-upon price. The Company settled the matter related to the Garages with the seller/developer and construction was completed.

In 2006, the Company accrued \$190,000 with respect to the New Units matter based on a settlement offer extended to the plaintiff, which was not accepted at that time. On November 9, 2007, the judge issued a summary judgment against the Company with respect to the construction of the New Units. The judgment did not specify damages, which the plaintiff was required to demonstrate at trial. On February 13, 2008, the court entered judgment related to the New Units on the seller/developer's behalf awarding them the amount of \$774,292 for costs and damages. The Company appealed the lower court decision and as a condition of the appeals process, the Company was required to post an appeal bond with the court, which was backed by an irrevocable letter of credit. In July, 2009, the appeal court ruled against the Company on its appeal and upheld the lower court judgment. The Company used operating cash to pay the judgment of \$774,292 and legal fees, costs and interest of approximately \$163,700. The Company cancelled the letter of credit at which time the segregated cash backing the irrevocable letter of credit was released and returned to operating cash.



The Company and our properties are not subject to any other material pending legal proceedings.

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ITEM 4. REMOVED

## PART II

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

There is no established public trading market for the outstanding common stock of the Company, the majority of which is held by KRF Company. As of March 31, 2010, there were 0 and 3 holders of shares of our Class A Common Stock and Class B Common Stock, respectively. No shares of the Class A Common Stock have been issued as of December 31, 2009. During 2009 the Company declared and distributed a special dividend in the amount of \$0.000017 per share on December 30, 2009. During 2008 the Company declared a cash dividend on its common stock for each of the quarters ended March 31, June 30 and September 30 in the per share amount of \$0.016996 and a special dividend in the amount of \$0.169963 per share on May 15, 2008. The Company did not declare a dividend on its common stock for the quarter ended December 31, 2008 or for any quarter during 2009 but plans to declare cash dividends on its outstanding common stock in the future as operations allow. Refer to Declaration of Dividends and Distributions in Part II Item 7 – Management's Discussion and Analysis of financial Condition and Results of Operations of Berkshire Income Realty, Inc.

Refer to Part III Item 12 – Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters herein for disclosures relating to the Company's equity compensation plans.

During the period October 1, 2009 to December 31, 2009, no purchases of any of the Company's securities registered pursuant to Section 12 of the 34 Act, were made by or on behalf of the Company or any affiliated purchaser.

## ITEM 6. SELECTED FINANCIAL DATA

The following table sets forth selected financial data regarding the financial position and operating results of the Company. See "Management's Discussion and Analysis of Financial Condition and Results of Operations of Berkshire Income Realty, Inc. for a discussion of the entities that comprise the Company. The following financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations of Berkshire Income Realty, Inc." and the financial statements of the Company (including the related notes contained therein). See the "Index to Financial Statements and Financial Statement Schedule" on page 58 to this report.

Selected financial data for the years ended December 31, 2008, 2007, 2006 and 2005 have been revised to reflect the sale of Century, St. Marin/Karrington ("St. Marin"), Westchester West and Berkshires at Westchase ("Westchase") in 2008, Dorsey's Forge ("Dorsey's") and Trellis at Lee's Mill ("Trellis") in 2007 and Windward Lakes in 2005. The operating results of Century, St. Marin and Westchester West from 2005 through 2008, Dorsey's for 2005 and 2006, Trellis for 2005 and 2006, Westchase from 2005 through 2008 and Windward Lakes for 2005, have been reclassified to discontinued operations to provide comparable information to 2009.

|                                    | Berkshire Income Realty, Inc. |              |              |              |              |
|------------------------------------|-------------------------------|--------------|--------------|--------------|--------------|
|                                    | December 31,                  |              |              |              |              |
|                                    | 2009                          | 2008         | 2007         | 2006         | 2005         |
| Operating Data:                    |                               |              |              |              |              |
| Total Revenue                      | \$79,462,079                  | \$70,137,260 | \$65,816,268 | \$53,878,152 | \$43,509,879 |
| Equity in income of Mortgage Funds | -                             | -            | -            | -            | 3,040,732    |

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|  |               |               |               |               |               |
|--|---------------|---------------|---------------|---------------|---------------|
| Depreciation   | 32,136,098    | 28,277,756    | 25,838,371    | 19,807,424    | 14,166,104    |
| Loss before equity in loss of Multifamily Venture Limited Partnership And Mezzanine Loan Limited Liability Company and loss from discontinued operations | (23,419,798 ) | (18,950,782 ) | (18,371,334 ) | (12,912,153 ) | (10,017,336 ) |
| Loss from continuing operations  | (28,591,252 ) | (22,555,279 ) | (21,326,981 ) | (17,557,191 ) | (14,347,441 ) |
| Income (loss) from discontinued operations   | (175,072 )    | 77,179,208    | 30,191,208    | (2,439,590 )  | 20,736,187    |
| Net income (loss) attributable to Parent Company   | 5,862,132     | 36,406,148    | 2,928,632     | (19,996,781 ) | 6,388,747     |
| Net income (loss) available to common shareholders   | (838,653 )    | 29,705,466    | (3,772,160 )  | (26,697,574 ) | (312,049 )    |
| Loss from continuing operations per common share, basic and diluted  | \$(0.48 )     | \$(33.76 )    | \$(24.15 )    | \$(17.25 )    | \$(15.61 )    |
| Income (loss) from discontinued operations per common share, basic and diluted   | \$(0.12 )     | \$54.89       | \$21.47       | \$(1.73 )     | \$15.37       |
| Net income (loss) attributable to Parent Company per common share – basic and diluted  | \$(0.60 )     | \$21.12       | \$(2.68 )     | \$(18.98 )    | \$(0.23 )     |
| Weighted average common shares outstanding, basic and diluted  | 1,406,196     | 1,406,196     | 1,406,196     | 1,406,196     | 1,348,963     |
| Cash dividends declared on common OP Units and Shares  | \$-           | \$12,000,000  | \$4,000,000   | \$12,000,000  | \$7,500,000   |

Balance Sheet Data, at year end:

|  |               |               |               |               |               |
|--|---------------|---------------|---------------|---------------|---------------|
| Real estate, before accumulated depreciation     | \$610,702,698 | \$555,681,036 | \$608,505,122 | \$594,268,122 | \$510,957,049 |
| Real estate, after accumulated depreciation      | 441,983,721   | 419,002,572   | 464,265,061   | 445,597,599   | 384,046,110   |
| Cash and cash equivalents                        | 17,956,617    | 24,227,615    | 22,479,937    | 15,393,249    | 22,134,658    |
| Total assets                                     | 503,245,298   | 480,417,430   | 528,062,630   | 492,700,178   | 425,661,892   |
| Total long term obligations                      | 474,830,728   | 432,013,999   | 506,903,882   | 469,378,510   | 370,521,700   |
| Noncontrolling interest in properties            | 416,382       | 293,650       | -             | -             | 7,003,446     |
| Noncontrolling interest in operating partnership | (34,251,501 ) | -             | -             | -             | -             |
| Stockholders' equity (deficit)                   | 30,617,891    | 31,456,569    | 2,061,803     | 5,939,014     | 32,923,388    |

Other Data:

|  |               |            |               |               |               |
|--|---------------|------------|---------------|---------------|---------------|
| Total multifamily apartment communities (at end of year) | 26            | 24         | 27            | 27            | 24            |
| Total apartment units (at end of year)                   | 6,778         | 6,434      | 7,869         | 7,900         | 7,347         |
| Funds from operations (1)                                | 4,784,152     | 7,648,325  | 6,983,249     | 6,633,510     | 8,203,365     |
| Cash flows (used in) provided by operating activities    | 9,596,978     | 12,464,803 | 13,545,647    | 15,123,243    | 14,115,221    |
| Cash flows (used in) provided by investing activities    | (25,744,815 ) | 21,304,954 | (30,113,455 ) | (83,385,159 ) | (109,371,965) |

|   |           |               |            |            |            |
|---|-----------|---------------|------------|------------|------------|
| Cash flows (used in) provided by financing activities | 9,876,839 | (32,022,079 ) | 23,654,496 | 61,520,507 | 85,478,357 |
|---|-----------|---------------|------------|------------|------------|

(1) The Company has adopted the revised definition of Funds from Operations (“FFO”) adopted by the Board of Governors of the National Association of Real Estate Investment Trusts (“NAREIT”). Management considers FFO to be an appropriate measure of performance of an equity REIT. We calculate FFO by adjusting net income (loss) (computed in accordance with GAAP, including non-recurring items), for gains (or losses) from sales of properties, real estate related depreciation and amortization, and adjustment for unconsolidated partnerships and ventures. Management believes that in order to facilitate a clear understanding of the historical operating results of the Company, FFO should be considered in conjunction with net income (loss) as presented in the consolidated financial statements included elsewhere herein. Management considers FFO to be a useful measure for reviewing the comparative operating and financial performance of the Company because, by excluding gains and losses related to sales of previously depreciated operating real estate assets and excluding real estate asset depreciation and amortization (which can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates), FFO can help one compare the operating performance of a company’s real estate between periods or as compared to different companies.

The Company’s calculation of FFO may not be directly comparable to FFO reported by other REITs or similar real estate companies that have not adopted the term in accordance with the current NAREIT definition or that interpret the current NAREIT definition differently. FFO is not a GAAP financial measure and should not be considered as an alternative to net income (loss), the most directly comparable financial measure of our performance calculated and presented in accordance with GAAP, as an indication of our performance. FFO does not represent cash generated from operating activities determined in accordance with GAAP and is not a measure of liquidity or an indicator of our ability to make cash distributions. We believe that to further understand our performance; FFO should be compared with our reported net income (loss) and considered in addition to cash flows in accordance with GAAP, as presented in our consolidated financial statements.

The following table presents a reconciliation of net income (loss) to FFO for the years ended December 31, 2009, 2008 and 2007:

|  | 2009            | December 31,<br>2008 | 2007         |
|--|-----------------|----------------------|--------------|
| Net income (loss)  | \$ (28,766,324) | \$ 54,623,929        | \$ 8,864,227 |
| Add:   |                 |                      |              |
| Depreciation of real property  | 28,207,506      | 24,618,377           | 26,460,337   |
| Depreciation of real property included in results of discontinued operations                                     | -               | 3,335,613            | 528,907      |
| Amortization of acquired in-place leases and tenant relationships  | 827,930         | 474,258              | 1,111,431    |
| Amortization of acquired in-place leases and tenant relationships included in results of discontinued operations | -               | -                    | 21,564       |
| Equity in loss of Multifamily Venture Limited Partnership  | 4,224,160       | 3,696,790            | 2,955,647    |
| Funds from operations of Multifamily Venture Limited Partnership   | 1,047,143       | 1,319,657            | 100,308      |
| Less:  |                 |                      |              |
| Noncontrolling interest in properties share of funds from operations   | (756,263 )      | (932,812 )           | (947,933 )   |
| Gain on disposition of real estate assets  | -               | (79,487,487)         | (32,111,239) |

|                       |              |              |              |
|-----------------------|--------------|--------------|--------------|
| Funds from Operations | \$ 4,784,152 | \$ 7,648,325 | \$ 6,983,249 |
|-----------------------|--------------|--------------|--------------|

FFO for the year ended December 31, 2009 decreased as compared to FFO for the year ended December 31, 2008. The decrease in FFO is due primarily to changes in the accounting for transaction costs under ASC 805-10 and the write-off of the Company's investment in the Mezzanine Loan LLC in the amount of \$1,117,825. ASC 805-10 requires that costs associated with acquisition transactions be expensed in the period incurred. Prior to the implementation of ASC 805-10, transaction costs were capitalized and included in the depreciable basis of acquired properties. Transaction costs for the acquisition of Glo Apartments total approximately \$1,183,299, which were included in General and Administrative expense on the Consolidated Statement of Operations. Additionally, payment of the judgment related to a matter ruled against the Company on appeal, of approximately \$747,992, also contributed to the decrease in FFO in the comparable years.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS OF BERKSHIRE INCOME REALTY, INC.

Management's Discussion and Analysis of Financial Condition and Results of Operation of Berkshire Income Realty, Inc. is intended to facilitate an understanding of the Company's business and results of operations. It should be read in conjunction with the Consolidated Financial Statements, the accompanying notes to the Consolidated Financial Statements and the selected data included in this Form 10K. This Form 10K, including the following discussion, contains forward looking statements regarding future events or trends as described more fully under "Special Note Regarding Forward Looking Statements" on page 4. Actual results could differ materially from those projected in such statements as a result of the risk factors described in Part I Item 1A, Risk Factors, of this Form 10K.

### Overview

The Company is engaged primarily in the ownership, acquisition and rehabilitation of multifamily apartment communities in the Baltimore/Washington D.C., Southeast, Southwest, Northwest and Midwest areas of the United States. We conduct substantially all of our business and own, either directly or through subsidiaries, substantially all of our assets through the Operating Partnership, a Delaware limited partnership. The Company's wholly owned subsidiary, BIR GP, L.L.C., a Delaware limited liability company, is the sole general partner of the Operating Partnership. As of March 31, 2010, the Company is the owner of 100% of the preferred limited partner units of the Operating Partnership, whose terms mirror the terms of the Company's Preferred Shares and, through BIR GP, L.L.C., owns 100% of the general partner interest of the Operating Partnership, which represents approximately 2.39% of the common economic interest of the Operating Partnership.

Our general and limited partner interests in the Operating Partnership entitle us to share in cash distributions from, and in the profits and losses of, the Operating Partnership in proportion to our percentage interest therein. The other partners of the Operating Partnership are affiliates that contributed their direct or indirect interests in certain properties to the Operating Partnership in exchange for common units of limited partnership interest in the Operating Partnership.

Our highlights of the year ended December 31, 2009 included the following:

- § On January 30, 2009, the Company closed on \$5,181,000 of fixed rate supplemental mortgage debt on the Berkshires of Columbia property. The loan is a non-recourse third mortgage note secured by the property with a fixed interest rate of 6.37%. The loan matures on October 1, 2014.
- § On February 24, 2009, the Company, through a newly formed subsidiary, BIR Glo, entered into the JV BIR/Holland with Holland Glo, LLC ("Holland Glo"), an unrelated third party, to acquire 89.955% of the ownership interests in a 201 unit multifamily mid-rise apartment community in Los Angeles, California. The purchase is consistent with the Company's desire to acquire well located multifamily apartment communities at attractive

prices. The purchase price of \$47,500,000 and related closing costs consisted of a capital commitment of \$12,580,314 plus the assumption of the outstanding mortgage debt secured by the property. As part of the total capital commitment, the Company has committed \$12,210,000 to JV BIR/Holland by providing two irrevocable letters of credit for the benefit of JV BIR/Holland in lieu of funding its capital obligations at closing. The letters of credit are backed by cash which is classified as restricted cash on the balance sheet at December 31, 2009. The purchase was subject to normal operating pro rations. As of June 30, 2009, the purchase price allocation was final and no further adjustment is contemplated. .

ASC 805-10 requires that identifiable assets acquired and liabilities assumed to be recorded at fair value as of the acquisition date. As of the acquisition date, the amounts recognized for each major class of assets acquired and liabilities assumed is as follows:

Asset Acquired

|                                   |               |
|-----------------------------------|---------------|
| Multifamily Apartment Communities | \$ 41,602,373 |
| Acquired in-place leases          | 607,893       |
| Prepaid expense and other assets  | 1,083,422     |
| Total assets acquired             | \$ 43,293,688 |

Liabilities Assumed:

|                           |               |
|---------------------------|---------------|
| Mortgage notes payable    | \$ 42,203,273 |
| Accrued expenses          | 80,760        |
| Tenant security deposits  | 159,936       |
| Total liabilities assumed | \$ 42,443,969 |

- § On February 26, 2009, the Company, through its wholly owned subsidiary, BIR Laurel Woods Limited Partnership, executed a non-recourse second mortgage note on the Laurel Woods Apartment for \$1,900,000, which is secured by the related property. The note has a fixed interest rate of 7.14% and matures on October 1, 2015.
- § On July 15, 2009, the Company lost its appeal of a judgment in a legal proceeding initiated by a seller/developer from whom the Company acquired a property in 2005. The appeals court ruled against the Company and upheld the lower court judgment for \$774,292 representing costs and damages in the case. The Company used available cash to pay the judgment of \$774,292 including legal fees, costs and interest of approximately \$163,700.
- § On November 10, 2009, the Company paid off the outstanding mortgage balance on the Berkshires of Citrus Park property in the amount of \$15,720,000 as the debt had reached maturity. The payment was funded from a draw on the revolving credit facility available from an affiliate in the amount of \$15,720,000. On March 1, 2010, the Company rate locked on mortgage debt that replaces the matured debt. The proceeds from the new financing will be used to repay the outstanding balance on the revolving credit facility.
- § On December 30, 2009, as part of a special distribution to common stockholders in the amount of \$1,025, the Company distributed its interest in the Leggat McCall Hingham Mezzanine Loan LLC, a Massachusetts Limited Liability Company to the common interest holder of the Operating Partnership. The interests were valued at \$1,000 at the time of distribution. The remaining portion of the special distribution in excess of the \$1,000, or \$25, was distributed pro-ratably to the two remaining common stockholders. Prior to the distribution, the Company had been required to recognize impairment charges on the investment which represented other-than-temporary declines in the fair value of the investment below the carrying value. The carrying value of the investment prior to distribution was \$0.
- § During the year ended December 31, 2009, the Company requested draws on the \$13,650,000 construction loan available from a lender for the development of The Reserves at Arboretum Place (formerly the Arboretum Land). As of December 31, 2009, the Company has received approximately \$12,325,000 in loan proceeds. The

loan balance outstanding at December 31, 2009 was \$12,434,751.



### Acquisition Strategy

The Company continues to seek out market rate core and core-plus acquisitions as it grows its portfolio. However, it is facing significant competition in many of the markets where it intends to invest. To broaden the scope of its acquisition sourcing efforts the Company continues to seek non-market/seller direct deals, bank and lender owned real estate and foreclosure auctions. We believe that this broadened approach will provide additional opportunities to acquire multifamily apartment communities that otherwise would not exist in the highly competitive markets in which we are seeking to buy.

### Financing and Capital Strategy

In select instances the Company evaluates opportunities available through venture relationships with institutional real estate investors on certain acquisitions. We believe this strategy allows the Company to enhance its returns on core and core-plus properties, without increasing the risk that is otherwise inherent in real estate investments. We believe a venture strategy allows us to acquire more multifamily apartment communities than our current capital base would otherwise allow, thereby achieving greater diversification and a larger portfolio to support the operating overhead inherent in a public company.

On January 28, 2005, the Board approved the investment of up to \$25,000,000 in, or 10% of the total equity raised by the Fund. The investment was also approved by the Audit Committee, which is composed solely of directors who are independent under applicable rules and regulations of the SEC and the NYSE Amex. The Fund, which was sponsored by our affiliate, Berkshire Advisors, was formed in August of 2005 and successfully raised equity in excess of expectations. The Company has committed to invest \$23,400,000, or approximately 7%, in the Fund and made all contributions of its commitment of \$23,400,000 as of December 31, 2008. The Company has evaluated its investment in the Fund and concluded that the investment, although subject to the requirements of ASC 810-10 "Consolidation of Variable Interest Entities", does not require the Company to consolidate the activity of the Fund. Additionally, the Company has determined, pursuant to the guidance promulgated in ASC 810-20, that the Company does not have a controlling interest in the Multifamily Limited Partnership and is not required to consolidate the activity of the Fund. The Company accounts for its investment in the Fund under ASC 970-323, as an equity method investment.

BVF II, an investment fund formed during 2007, was sponsored by our affiliate, Berkshire Advisors. The Company did not make an investment in BVF II, but as an affiliate, is subject to certain investment restrictions. The investment objectives of BVF II are similar to those of the Company and under the terms of BVF II, Berkshire Advisors is generally required to present investment opportunities, which meet BVF II's investment criteria, only to BVF II. Under the terms of BVF II, the Company has the right to acquire assets that: (i) satisfy the requirements of Section 1031 of the Internal Revenue Code for like-kind exchanges for properties held by the Company or (ii) involve less than \$8,000,000 of equity capital in any 12-month period if such capital is generated as a result of refinancing of debts of the Company. The restrictions of BVF II are only applicable during the commitment phase of BVF II and the \$8,000,000 equity capital limit can be carried over from any prior 12-month period and can accumulate to a total of \$16,000,000.

The Company has completed the development of one of the two parcels of vacant land that it owns. The property, known as The Reserves at Arboretum Place, was approved for development on November 1, 2007 and construction of the 143 units and clubhouse began in early 2008. The project development cost was estimated at approximately \$17,358,000 and was completed in early 2009. As of December 31, 2009, the project development costs incurred were approximately \$16,958,000 and included all costs, exclusive of land, with the exception of some minor costs to complete final items. Interest costs were capitalized on the development until construction was substantially complete in the first quarter of 2009. There was \$152,188 and \$395,613 of interest capitalized in the years ended December 31, 2009 and 2008, respectively. No development plans are currently in the works for the other vacant parcel.

### Critical Accounting Policies

The discussion below describes what we believe are the critical accounting policies that affect the Company's more significant judgments and the estimates used in the preparation of its financial statements. The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires us to make estimates and judgments that affect the reported amounts of assets and liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities in the Company's financial statements and related notes. We believe that the following critical accounting policies affect significant judgments and estimates used in the preparation of the Company's financial statements.

#### Purchase Accounting for Acquisition of Real Estate

The Company accounts for its acquisitions of investments in real estate in accordance with ASC 805-10, which requires the fair value of the real estate acquired to be allocated to the acquired tangible assets, consisting of land, building, furniture, fixtures and equipment and identified intangible assets and liabilities, consisting of the value of the above-market and below-market leases, the value of in-place leases and value of other tenant relationships, based in each case on their fair values. The Company considers acquisitions of operating real estate assets to be businesses as that term is contemplated in 810-10-55-9.

The Company allocates purchase price to the fair value of the tangible assets of an acquired property (which includes land, building, furniture, fixtures and equipment) determined by valuing the property as if it were vacant. The as-if-vacant value is allocated to land and buildings, furniture, fixtures and equipment based on management's determination of the relative fair values of these assets.

Above-market and below market in-place lease values for acquired properties are recorded based on the present value (using an interest rate which reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to the in-place leases and (ii) management's estimate of fair market lease rates for the corresponding in-place leases, measured over a period equal to the remaining non-cancelable term of the lease. The capitalized above-market lease values are amortized as a reduction of rental income over the remaining non-cancelable terms of the respective leases. The capitalized below-market lease values are amortized as an increase to rental income over the initial term and any fixed-rate renewal periods in the respective leases.

Management may engage independent third-party appraisers to perform these valuations and those appraisals use commonly employed valuation techniques, such as discounted cash flow analyses. Factors considered in these analyses may include estimates of carrying costs during hypothetical expected lease-up periods considering current market conditions, and costs to execute similar leases. The Company also considers information obtained about each property as a result of its pre-acquisition due diligence, marketing and leasing activities in estimating the fair value of the tangible and intangible assets acquired. In estimating carrying costs, management also includes real estate taxes, insurance and other operating expenses and estimates of lost rentals at market rates during the expected lease-up periods depending on specific local market conditions and depending on the type of property acquired.

The total amount of other intangible assets acquired is further allocated to in-place leases and tenant relationships, which includes other tenant relationship intangible values based on management's evaluation of the specific characteristics of the residential leases and the Company's tenant retention history. The value of in-place leases and tenant relationships are amortized over the initial term of the respective leases and any expected renewal period.

#### Impairment of Long-Lived Assets

The Company reviews its long-lived assets used in operations for impairment when there is an event or change in circumstances that indicates an impairment in value. If such impairment is present, an impairment loss is recognized based on the excess of the carrying amount of the asset over its fair value. The evaluation of anticipated cash flows is highly subjective and is based in part on assumptions regarding future rental occupancy, rental rates and capital requirements that could differ materially from actual results in future periods. No such losses have been recognized to date.

#### Impairment of Investments in Unconsolidated Joint Ventures

Our investments in unconsolidated joint ventures are reviewed for impairment periodically and we record impairment charges when events or circumstances change indicating that a decline in the fair values below the carrying values has occurred and such decline is other-than-temporary. The ultimate realization of our investment in unconsolidated joint ventures is dependent on a number of factors, including the performance of each investment and market conditions. We will record an impairment charge if we determine that a decline in the value of an investment in an unconsolidated joint venture is other-than-temporary. No such impairment charges have been recognized to date.

#### Capital Improvements

The Company's policy is to capitalize the cost of acquisitions (exclusive of transaction costs), rehabilitation and improvement of properties. Capital improvements are costs that increase the value and extend the useful life of an asset. Ordinary repair and maintenance costs that do not extend the useful life of the asset are expensed as incurred. Costs incurred on a lease turnover due to normal wear by the resident are expensed on the turn. Recurring capital improvements typically include items such as appliances, carpeting, flooring, HVAC equipment, kitchen and bath cabinets, site improvements and various exterior building improvements. Non-recurring upgrades include kitchen and bath upgrades, new roofs, window replacements and the development of on-site fitness, business and community centers.

The Company is required to make subjective assessments as to the useful lives of its properties and improvements for purposes of determining the amount of depreciation to reflect on an annual basis. These assessments have a direct impact on the Company's net income.

#### Investments in Multifamily Venture and Multifamily Limited Partnership

The Company's investments in the Multifamily Venture, Multifamily Limited Partnership, or ownership arrangements with unaffiliated third parties, were evaluated pursuant to the requirements of ASC 810-10 and none were determined to require the Company to consolidate the operating results of the investee. Additionally, the Company has determined, pursuant to the guidance promulgated in ASC 810-20 that the Company does not have a controlling interest in the Multifamily Limited Partnership and is not required to consolidate the activity of the Fund. The Company has accounted for the investments in accordance with ASC 970-323 as an equity method investment. The investments are carried as an asset on the balance sheet as Investment in Multifamily Venture and Limited Partnership and the Company's equity in the income or loss of the venture is reflected as a single line item in the income statement

as Equity in loss of Multifamily Venture and Limited Partnership.

### Corporate Governance

Since the incorporation of our Company, we have implemented the following corporate governance initiatives to address certain legal requirements promulgated under the Sarbanes-Oxley Act of 2002, as well as NYSE Amex corporate governance listing standards:

- § We have elected annually three independent directors, Messrs. Robert Kaufman, Richard Peiser and Randolph Hawthorne, each of whom the Board determined to be independent under applicable SEC and NYSE Amex rules and regulations;
- § The Board has determined annually that Robert Kaufman, the Chairman of our Audit Committee, qualifies as an "audit committee financial expert" under applicable rules and regulations of the SEC;
- § The Board's Audit Committee adopted our Audit and Non-Audit Services Pre-Approval Policy, which sets forth the procedures and the conditions pursuant to which permissible services to be performed by our independent public accountants must be pre-approved;
- § The Board's Audit Committee established "Audit Committee Complaint Procedures" for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including the anonymous submission by employees of concerns regarding questionable accounting or auditing matters;
- § The Board adopted a Code of Business Conduct and Ethics, which governs business decisions made and actions taken by our directors, officers and employees. A copy of this Code is available in print to stockholders upon written request addressed to the Company, c/o Investor Relations, One Beacon Street, Suite 1500, Boston, MA 02108;
- § The Board established an Ethics Hotline that employees may use to anonymously report possible violations of the Code of Business Conduct and Ethics, including concerns regarding questionable accounting, internal accounting controls or auditing matters.

### Recent Accounting Pronouncements

In July 2009, the Financial Accounting Standards Board ("FASB") issued the FASB Accounting Standard Codification ("ASC") 105-10 ("ASC 105-10" or the "Codification"), which reorganizes the accounting principles generally accepted in the United States of America ("GAAP") hierarchy. ASC 105-10 is intended to improve financial reporting by providing a consistent framework for determining what accounting principles should be used in preparing GAAP financial statements. Other than resolving certain minor inconsistencies in current GAAP, the Codification is not supposed to change GAAP, but is intended to make it easier to find and research GAAP applicable to a particular transaction or specific accounting issue. The Codification is a new structure which takes accounting pronouncements and organizes them by approximately 90 accounting topics. ASC 105-10 is effective for interim periods ending after September 15, 2009. The Company's adoption of ASC 105-10 did not have any impact on its financial position and results of operations.

In December 2007, the FASB issued ASC 805-10, which is intended to improve reporting by creating greater consistency in the accounting and financial reporting of business combinations. ASC 805-10 establishes principles

and requirements for how the acquiring entity shall recognize and measure in its financial statements the identifiable assets acquired, liabilities assumed, any noncontrolling interest in the acquired entity and goodwill acquired in a business combination. This guidance is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company adopted ASC 805-10 as of January 1, 2009, which resulted in a \$1,183,299 charge to operations for transaction costs associated with the acquisition of Glo Apartments.

In May 2008, the FASB issued ASC 815-10, which amends and expands the disclosure requirements of ASC 815-10 with the intent to provide users of financial statements with an enhanced understanding of: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under ASC 815-10 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. ASC 815-10 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about the fair value of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative instruments. ASC 815-10, as amended and interpreted, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. The Company has assessed the impact of ASC 815-10 and determined that the adoption of ASC 815-10 did not have a material impact on the financial position or operating results of the Company.

Effective January 1, 2009, the Company adopted ASC 810-10, which establishes and expands accounting and reporting standards for noncontrolling interests (which are recharacterized as noncontrolling interests) in a subsidiary and the deconsolidation of a subsidiary. As a result of the Company's adoption of this standard, amounts previously reported as noncontrolling interests in properties and noncontrolling interests in Berkshire Income Realty-OP, L.P. (the "Operating Partnership") on our balance sheets are now presented as noncontrolling interests in properties and noncontrolling interests in Operating Partnership within equity. There has been no change in the measurement of this line item from amounts previously reported.

Also effective with the adoption of ASC 810-10, previously reported noncontrolling interests have been recharacterized on the accompanying statement of operations to noncontrolling interests and placed below net loss before arriving at net loss attributable to Parent Company. In accordance with the guidance of ASC 810-10, the Company allocated losses to the noncontrolling interest in Operating Partnership of \$34,251,501, which represents their share of losses. Historically, these losses were allocated to the common shareholders.

In April 2009, the FASB issued ASC 820-10, which provides additional guidance for estimating fair value in accordance with ASC 820-10, when the volume and level of activity for the asset or liability have significantly decreased and for identifying transactions that are not orderly. ASC 820-10 is effective for interim and annual reporting periods ending after June 15, 2009. The Company elected early adoption of ASC 820-10 as of January 1, 2009. The Company has assessed the impact of ASC 820-10 and has determined that the adoption of ASC 820-10 did not have a material impact on the financial position or operating results of the Company.

In April 2009, the FASB issued ASC 825-10 which requires disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. Effective January 1, 2009, the Company adopted ASC 825-10, which did not have a material impact on the financial position or operating results of the Company.

In April 2009, the FASB issued ASC 855-10 which provides authoritative guidance for subsequent events. This guidance is intended to establish general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. Effective April 1, 2009, the Company adopted ASC 855-10, which did not have any impact on its financial position and results of operations.

#### Liquidity and Capital Resources

## Cash and Cash Flows

As of December 31, 2009, 2008 and 2007, the Company had approximately, \$17,957,000, \$24,228,000 and \$22,480,000 of cash and cash equivalents, respectively.

|   | Year ended December 31, |               |               |
|---|-------------------------|---------------|---------------|
|   | 2009                    | 2008          | 2007          |
| Cash provided by operating Activities           | \$ 9,596,978            | \$ 12,464,803 | \$ 13,545,647 |
| Cash provided by (used in) investing activities | (25,744,815)            | 21,304,954    | (30,113,455)  |
| Cash provided by (used in) financing activities | 9,876,839               | (32,022,079)  | 23,654,496    |

During the year ended December 31, 2009, cash decreased by \$6,270,998. The main component of the overall decrease was \$25,744,815 of cash used by the Company's investing activities. The activities relate mainly to capital expenditures related to the rehabilitation and development of the Company's properties of \$14,288,389, including \$2,701,720 for the development of the Arboretum Land and funds used to acquire the joint venture ownership interest in Glo which included a payment of \$849,719 at closing and the transfer of \$12,621,014 to fund a restricted cash account to support irrevocable letters of credit required by the provisions of the supplemental financing, partially offset by net withdrawals of \$2,037,429 from replacement reserves held by lenders. The cash used by investing activities was partially offset by \$9,876,839 of cash provided from financing activities which include proceeds from advances on the construction loan on the Reserves at Arboretum property of \$12,434,751 and new supplemental debt on various properties totaling \$7,081,000 and borrowings on the revolving credit facility available from an affiliate of \$15,720,000, partially offset by the payment of principal on existing mortgage loans of \$3,182,867, repayment of the mortgage on the Berkshires at Citrus Park property of \$15,720,000 at maturity and distributions to preferred shareholders of \$6,700,785. Additionally, the net cash used by the financing and investing activities of the Company was further offset by an increase in cash of \$9,596,978 provided by the operating activities of the Company.

The Company's principal liquidity demands are expected to be distributions to our preferred shareholders, distributions to common shareholders and Operating Partnership unitholders, subject to sufficient liquidity, capital improvements, rehabilitation projects and repairs and maintenance for the properties, acquisition of additional properties within the investment restrictions placed on it by BVF II and, debt repayment. Debt repayment in 2010 includes the repayment of the supplemental debt on the Glo property in the amount of \$12,210,000, for which, per the requirements of the financing, funds have been segregated and are reflected as restricted cash on the balance sheet as of December 31, 2009 and the repayment of the revolving credit facility balance of \$15,720,000 which will be paid from proceeds on the new loan on the Berkshires at Citrus Park property. The remainder of the 2010 as well as the 2011 and 2012 debt repayment represents normal monthly amortization of the mortgage debt with the exception of the maturity of a supplemental loan of approximately \$3,500,000 in 2012.

The Company intends to meet its short-term liquidity requirements through net cash flows provided by operating activities and advances from the revolving credit facility. The Company considers its ability to generate cash to be adequate to meet all operating requirements and make distributions to its preferred stockholders in accordance with the provisions of the Tax Code, applicable to REITs. Funds required to make distributions to our preferred and common shareholders and Operating Partnership unitholders that are not provided by operating activities will be

supplemented by property debt financing and refinancing activities. As circumstances dictate and depending on the availability of funds, the Board may vote to forgo quarterly distributions to the Company's common shareholders and Operating Partnership unitholders as it has done during 2009.

The Company intends to meet its long-term liquidity requirements through property debt financing and refinancing. The Company has two supplemental mortgages, totaling \$12,210,000, that mature in 2010. As previously mentioned, the provisions of the financing required that the funds to pay the maturing debt be segregated. During the year, a mortgage in the amount of \$15,720,000 matured and was repaid using proceeds from the revolving credit facility in November 2009. Replacement financing has been secured by the Company and is expected to close in the first quarter of 2010. The Company will use some of the proceeds to repay the balance due on the revolving credit facility. The Company may seek to expand its ability to purchase properties through the use of venture relationships with other companies.



There is no guarantee that the Company's borrowing arrangements or other arrangements for obtaining liquidity will continue to be available, or if available, will be available on terms and conditions acceptable to the Company. Unfavorable economic conditions also could increase funding costs, limit access to the capital markets or result in a decision by lenders not to extend credit to the Company. In addition, a decline in market value of the Company's assets may have particular adverse consequences in instances where the Company borrowed money based on the fair value of those assets. A decrease in market value of those assets may result in the lender requiring the Company to post additional collateral at a time when it may not be in the Company's best interest to do so. As of December 31, 2009 the Company does not have significant exposure to financing in which the lender can require the Company to post additional collateral or otherwise sell assets to settle the financing obligations.

As of December 31, 2009, the Company has obtained fixed interest rate mortgage financing on all of the properties in the portfolio except the newly acquired Glo property which has variable rate debt. The Company notes that the Berkshires at Citrus Park property no longer has outstanding debt as of December 31, 2009. Replacement debt has been secured for the Citrus Park property and the variable rate debt on the Glo property was assumed during the year ended December 31, 2009.

The Company has a \$20,000,000 revolving credit facility in place with an affiliate of the Company. The facility provides for interest on borrowings at a rate of 5% above the 30 day LIBOR rate, as announced by Reuter's, and fees based on borrowings under the facility and various operational and financial covenants, including a maximum leverage ratio and a maximum debt service ratio. The facility provides for a 60-day notice of termination by which the lender can affect a termination of the commitment under the facility and render all outstanding amounts due and payable. Additionally, the facility also contains a clean-up requirement which requires the borrower to repay in full all outstanding loans and have no outstanding obligations under the Agreement for a 14 consecutive day period during each 365-day period. During the twelve months ended December 31, 2009, the Company borrowed \$15,720,000 from the credit facility, to pay the debt that matured on the Berkshires at Citrus Park property. The \$15,720,000 borrowing is outstanding as of December 31, 2009 and the Company currently anticipates it will be repaid with funds realized from the replacement financing, expected to close in the first quarter of 2010.

#### Indebtedness

The following table provides summary information with respect to the mortgage debt incurred by the Company during the year ended December 31, 2009:

| Property Name                       | New Balance   | Closing Date      | Interest Rate | Term    |
|-------------------------------------|---------------|-------------------|---------------|---------|
| <b>Fixed Rate Mortgages:</b>        |               |                   |               |         |
| Arboretum Land (1)                  | \$ 12,434,751 | January 28, 2008  | 6.20 %        | 7 years |
| Berkshires of Columbia - (3rd Note) | 5,181,000     | January 30, 2009  | 6.37 %        | 5 Years |
| Laurel Woods - (2nd Note)           | 1,900,000     | February 26, 2009 | 7.14 %        | 6 Years |
| Sub-total                           | \$ 19,515,751 |                   |               |         |
| <b>Variable Rate Mortgages (2):</b> |               |                   |               |         |
| Glo                                 | \$ 29,993,273 | February 24, 2009 | 1.52 %        | 28 Year |
| Glo - (2nd Note)                    | 9,500,000     | February 24, 2009 | 1.52 %        | 1 Year  |
| Glo - (3rd Note)                    | 2,710,000     |                   | 1.52 %        | 1 Year  |

|               |                      |
|---------------|----------------------|
|               | February 24,<br>2009 |
| Sub-total (3) | \$ 42,203,273        |
| Total         | \$ 61,719,024        |

- (1) The loan is a construction loan for 2 years and permanent financing for 5 years. The total amount available under the construction loan is \$13,650,000. There were funding advances totaling \$12,434,751 during the year ended December 31, 2009. An additional draw request has been made to the lender and is expected to be funded during the first quarter of 2010.
- (2) The stated interest rate for the variable rate mortgage debt represents the rate of interest as of December 31, 2009.
- (3) Debt assumed pursuant to the acquisition of Glo totaled \$47,500,000, but was recorded at fair value in accordance with ASC 805-10 as of the acquisition date. Refer to Part IV Item 15 – Notes to Consolidated Financial Statements, Footnote 18 – Subsequent Events for additional information.

#### Capital Expenditures

The Company incurred \$4,220,414 and \$5,114,990 in recurring capital expenditures during the year ended December 31, 2009 and 2008, respectively. Recurring capital expenditures typically include items such as appliances, carpeting, flooring, HVAC equipment, kitchen and bath cabinets, site improvements and various exterior building improvements.

The Company incurred \$8,508,399 and \$23,986,829 in renovation-related and development capital expenditures during the year ended December 31, 2009 and 2008, respectively. Renovation related capital expenditures generally include capital expenditures of a significant non-recurring nature, including construction management fees payable to an affiliate of the Company, where the Company expects to see a financial return on the expenditure or where the Company believes the expenditure preserves the status of a property within its sub-market.

In September 2008, the Company sustained varying degrees of damage from Hurricane Ike to four of its Houston area properties. The Walden Pond property suffered the greatest damage estimated at approximately \$2.5 million of which the Company will be responsible for a \$570,000 insurance deductible. Brompton, Briarwood and Gables all suffered minimal damage estimated at approximately \$50,000 each. As of December 31, 2009, the Company has incurred \$1,559,576 of costs associated with rebuilding and repairs related to Hurricane Ike which have been recorded as capital expenditures during 2009 and 2008.

In December 2006, the Company, as part of the decision to acquire the Standard at Lenox Park property, approved a rehabilitation project at the 375-unit property of approximately \$5,000,000 for interior and exterior improvements. As of December 31, 2009, the project, which includes rehabilitation of the kitchens, bathrooms, lighting and fixtures, was 100% complete and all of the renovated units have been leased.

During 2007 the Company, as part of the decision to acquire the Hampton House property, contemplated a rehabilitation project at the 196-unit property of approximately \$6,150,000 for interior and exterior renovation improvements. The project includes rehabilitation of interior common areas including the lobby and central utility systems and replacement of all windows and painting of the exterior. As of December 31, 2009, the project was 57% complete as 112 of the 196 units had been completed, of which 108 units, or 96% have been leased.

The Company has completed the development of one of the two parcels of vacant land that it owns. The property, known as The Reserves at Arboretum Place, was approved for development on November 1, 2007 and construction of the 143 units and clubhouse began in early 2008. The project development cost was estimated at approximately \$17,358,000 and was completed in early 2009. As of December 31, 2009, the project development costs incurred were approximately \$16,958,000 and included all costs, exclusive of land, with the exception of some minor costs to complete final items. Interest costs are capitalized on the development until construction is substantially complete. There was \$152,188 and \$395,613 of interest capitalized in the years ended December 31, 2009 and 2008, respectively. No development plans are currently in the works for the other vacant parcel.

Pursuant to terms of the mortgage debt on certain properties in the Company's portfolio, lenders require the Company to fund repair or replacement escrow accounts. The funds in the escrow accounts are disbursed to the Company upon completion of the required repairs or renovations activities. The Company is required to provide to the lender documentation evidencing the completion of the repairs, and in some cases, are subject to inspection by the lender. Refer to Part IV Item 15 - Notes to the Consolidated Financial Statements, Footnote 10 – Commitments and Contingencies.

The Company's capital budgets for 2010 anticipate spending approximately \$8,249,000 for ongoing rehabilitation, including the ongoing Hampton House project. As of December 31, 2009, the Company has not committed to any new significant rehabilitation projects.

#### Off-Balance Sheet Arrangements

The Company's investment in BVF obligated the Company to make capital contributions to BVF in the amount of \$23,400,000 during the investment period of the Fund. As of December 31, 2009, the Company has made 100% of the capital contributions required by BVF. The Company has no obligation to make any additional contributions of capital to BVF.

## Acquisitions and Dispositions

### Discussion of acquisitions for the year ended December 31, 2009

On February 24, 2009, the Company, through a newly formed subsidiary, BIR Glo, L.L.C. ("BIR Glo"), entered into the BIR Holland JV, LLC joint venture agreement ("JV BIR/Holland") with Holland Glo, LLC ("Holland Glo"), an unrelated third party, to acquire 89.955% of the ownership interests in a 201 unit multifamily mid-rise apartment community in Los Angeles, California. The purchase is consistent with the Company's desire to acquire well located multifamily apartment communities at attractive prices. The purchase price of \$47,500,000 and related closing costs consisted of a capital commitment of \$12,580,314 plus the assumption of the outstanding mortgage debt secured by the property. As part of the total capital commitment, the Company has committed \$12,210,000 to JV BIR/Holland by providing two irrevocable letters of credit for the benefit of JV BIR/Holland in lieu of funding its capital obligations at closing. The letters of credit are backed by cash which is classified as restricted cash on the balance sheet at December 31, 2009. The purchase was subject to normal operating pro rations. As of June 30, 2009, the purchase price allocation was final and no further adjustment is contemplated.

### Discussion of dispositions for the year ended December 31, 2009

The Company did not dispose of any properties during the year ended December 31, 2009.

## Contractual Obligations and Other Commitments

On January 25, 2008, the Company, through its wholly owned subsidiary BIR Arboretum Development L.L.C., executed a fixed rate first mortgage note for \$13,650,000, which is collateralized by the related property. The proceeds of the loan have been used to build a multifamily apartment community on a parcel of land adjacent to the Arboretum Place Apartments, a multifamily apartment community also owned by the Company. The interest rate on the note is fixed at 6.20% and has a term of 7 years, including a 2 year construction period and 5 years of permanent financing. The loan is a mortgage note and was granted with equity requirements that provide for the Company to make an equity investment of \$5,458,671, inclusive of land equity of \$2,150,000, in the project. As of December 31, 2009, advances on the construction loan total \$12,434,751.

On February 24, 2009, the Company entered into two irrevocable letters of credit arrangements with a bank in relation to the JV BIR/Holland transaction. The irrevocable letters of credit were a requirement of the lender, who issued the debt secured by the property substantially owned by JV BIR/Holland, in order for the new ownership structure contemplated by the transaction to move forward. The irrevocable letters of credit are in place as a guarantee for two separate principal reduction payments of \$9,500,000 originally due in 2009 and \$2,710,000 due in 2010. On July 27, 2009, Fannie Mae granted a six-month extension for the amount due in 2009 of \$9,500,000 to March 15, 2010. The letters of credit are backed by cash segregated in accounts maintained at the bank. The cash is reflected as restricted cash on the balance sheet of the Company as of December 31, 2009.

The Company expects to continue to take advantage of the low interest rate mortgage environment as it acquires additional properties. The Company expects to use leverage amounts up to 75% of the fair market value on a portfolio basis.

The primary obligations of the Company relate to its borrowings under the mortgage notes payable. The \$474,830,728 in mortgage notes payable has varying maturities ranging from 1 to 18 years. The following table

summarizes our contractual obligations as of December 31, 2009:

|   | 2010 (3)     | 2011        | 2012         | 2013         | 2014         | Thereafter    |
|---|--------------|-------------|--------------|--------------|--------------|---------------|
| Long Term Debt Obligations  |              |             |              |              |              |               |
| (1)   | \$15,579,044 | \$4,924,807 | \$10,399,704 | \$62,607,515 | \$67,902,136 | \$313,417,522 |
| Capital Lease Obligations   | -            | -           | -            | -            | -            | -             |
| Operating Lease Obligations                                       | -            | -           | -            | -            | -            | -             |
| Purchase Obligations  |              |             |              |              |              |               |
| (2)   | -            | -           | -            | -            | -            | -             |
| Other Long-Term Liabilities Reflected on Balance Sheet under GAAP | -            | -           | -            | -            | -            | -             |

(1) Amounts include principal payments only. The Company will pay interest on outstanding indebtedness based on the rates and terms as summarized in Part IV Item 15 - Notes to the Consolidated Financial Statements, Footnote 6 – Mortgage Notes Payable.

(2) The Company has obligations under numerous contracts with various service providers at its properties. None of these contracts are for periods greater than one year or are material either individually or in aggregate to the Company's operations.

(3) The supplemental mortgages outstanding and secured by the Glo property in the amount of \$12,210,000 mature in March 2010. As a requirement of the financing, the amounts maturing in 2010 are back by irrevocable letters of credit in amounts sufficient to retire the debt. As a requirement of the irrevocable letters of credit, the issuing bank required corresponding cash be segregated to back the letters of credit. The segregated cash is reflected as restricted cash on the balance sheet as of December 31, 2009.

### Competition

The Company competes with other multifamily apartment community owners and operators and other real estate companies in seeking properties for acquisition and in attracting potential residents. The Company's properties are in developed areas where there are other properties of the same type, which directly compete for residents. The Company believes that its focus on resident service and satisfaction gives it a competitive advantage when competing against other communities for tenants.

### Market Environment

While economists declared the worst recession to hit the United States since the 1930's to be over in late 2009, with policymakers efforts to stabilize the banking system and provide a fiscal stimulus to the economy, the high national unemployment rate remains a drag to a strong economic recovery. While there are many indications of stabilization in both domestic and foreign economies, the signs of robust recovery have yet to manifest themselves. Even if the recession is technically over, labor markets tend to recover with some lag, and it is only when labor markets stabilize that there will be an increase in household formation, which represents the greatest driver for rental apartments.

The Company both believes and recognizes that real estate goes through cycles and while the drivers of these cycles can vary greatly from cycle to cycle, the outcome is generally the same with periods of improving values and profit growth followed by periods of stagnant or declining values and profit stagnation. The Company recognizes, however, that real estate investing requires a long-term perspective and, as history suggests, a company's ability to remain resilient during tough economic times will often lead to opportunities. In general, multifamily real estate fundamentals of well located quality real estate remained relatively steady during the recent economic downturn. Occupancy rates continue to hover in the low to mid-90% range for well located, well managed properties though continued weakness in the economy and/or a lack of improvement in employment rates could have a negative impact on both occupancy and rent levels. Credit worthy borrowers in the multifamily sector have continued to be able to access capital through Fannie Mae and Freddie Mac, and other sources, through 2009 and into 2010 at historically attractive rates. Though there is no assurance that under existing or future regulatory restrictions this source of capital, unique to multifamily borrowers, will continue to be available.

The Company continues to believe that projected demographic trends will favor the multifamily sector, driven primarily by the continued flow of echo boomers (children of baby boomers, age 20 to 29), the fastest growing segment of the population, and an increasing number of immigrants who are often renters by necessity. In many cases, the current economic climate has delayed many would be residents from entering the rental market and instead choosing to remain at home or to share rental units instead of renting their own space. This trend may be creating a backlog of potential residents who will enter the market as the economy begins to rebound and unemployment rates begin to trend back to historical norms. The Company's properties are generally located in markets where zoning restrictions, scarcity of land and high construction costs create significant barriers to new development. The Company believes it is well positioned to manage its portfolio through the remainder of this economic downturn and is prepared to take advantage of opportunities that present themselves during such times.

#### Declaration of Dividends and Distributions on Class B Common Stock

On May 6, 2008, the Board authorized the general partner of the Operating Partnership to distribute quarterly distributions of \$1,000,000 each, in the aggregate, from its operating cash flows to common general and common limited partners, payable on August 15, 2008 and November 15, 2008. On the same day, the Board also declared a common dividend of \$0.016996 per share on the Company's Class B common stock payable concurrently with the Operating Partnership distributions. Also on May 6, 2008, the Board authorized the general partner of the Operating Partnership to distribute a special distribution of \$10,000,000 from its operating cash flows to common general and common limited partners, payable on May 15, 2008. On the same day, the Board also declared a common dividend of \$0.169963 per share on the Company's Class B common stock payable concurrently with the Operating Partnership distribution.

December 30, 2009, the Board authorized the general partner of the Operating Partnership to distribute a special distribution of \$1,025. \$1,000 of the total distribution was an in-kind distribution of the Company's investment in the Mezzanine Loan LLC to KRF Company LLC, an affiliate of the company and majority holder of the Class B common stock. The remaining \$25 balance of the special distribution was paid to the two remaining holders in cash from its operating cash flows to common general and common limited partners, payable on December 30, 2009. On the same day, the Board also declared a common dividend of \$0.000017 per share on the Company's Class B common stock payable concurrently with the Operating Partnership distribution.



For the year ended December 31, 2009 and 2008, the Company declared a total of \$1,025 and \$12,000,000 respectively, of distributions to common shareholders. There was no common dividend payable outstanding at December 31, 2009 or December 31, 2008.

The Company's policy to provide for common distributions is based on available cash and Board approval.

#### Results of Operations and Financial Condition

During 2009, the Company's portfolio increased by 2 to 26 properties, which reflected the acquisition of 1 property and the completion of development of The Reserves at Arboretum Place (formerly referred to as Arboretum Land (the "Total Portfolio")) during the year. As a result of changes in the Total Portfolio over time, including the change in the portfolio holdings during 2009, the financial statements show considerable changes in revenue and expenses from period to period. The Company does not believe that its period-to-period financial data are comparable. Therefore, the comparison of operating results for the years ended December 31, 2009 and 2008 reflect changes attributable to the properties that were owned by the Company throughout each period presented (the "Same Property Portfolio").

Net Operating Income ("NOI") falls within the definition of a "non-GAAP financial measure" as stated in Item 10(e) of Regulation S-K promulgated by the SEC. The Company believes NOI is a measure of operating results that is useful to investors to analyze the performance of a real estate company because it provides a direct measure of the operating results of the Company's multifamily apartment communities. The Company also believes it is a useful measure to facilitate the comparison of operating performance among competitors. The calculation of NOI requires classification of income statement items between operating and non-operating expenses, where operating items include only those items of revenue and expense which are directly related to the income producing activities of the properties. We believe that to achieve a more complete understanding of the Company's performance, NOI should be compared with our reported net income (loss). Management uses NOI to evaluate the operating results of properties without reflecting the effect of capital decisions such as the issuance of mortgage debt and investments in capital items, in turn these capital decisions have an impact on interest expense and depreciation and amortization.

The most directly comparable financial measure of our NOI, calculated and presented in accordance with GAAP, is net income (loss), shown on the statement of operations. For the years ended December 31, 2009, 2008 and 2007, the net income (loss) was \$(28,766,324), \$54,623,929 and \$8,864,227, respectively. A reconciliation of our NOI to net income for the years ended December 31, 2009, 2008 and 2007 are presented as part of the following tables on pages 32 and 36.

#### Comparison of year ended December 31, 2009 to the year ended December 31, 2008

The tables below reflect selected operating information for the Same Property Portfolio and the Total Property Portfolio for the years ended December 31, 2009 and 2008. The Same Property Portfolio consists of the 24 properties acquired or placed in service on or prior to January 1, 2008 and owned through December 31, 2009. The Total Property Portfolio includes the effect of the change in the 1 property acquired during the year, Glo, and the completion of development of 1 property, The Reserves at Arboretum Place. (The 2008 activity for the Century, St Marin, Westchester West and Westchase has been removed from the presentation as the results have been reflected as discontinued operations in the consolidated statements of operations.)

|      | Same Property Portfolio |           |   |
|------|-------------------------|-----------|---|
|      | Year Ended December 31, |           |   |
| 2009 | 2008                    | Increase/ | % |



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|  |                 |                 | (Decrease)   | Change   |   |
|--|-----------------|-----------------|--------------|----------|---|
| <b>Revenue:</b>  |                 |                 |              |          |   |
| Rental   | \$ 65,557,162   | \$ 64,379,361   | \$ 1,177,801 | 1.83     | % |
| Interest, utility reimbursement and other  | 4,505,618       | 4,131,373       | 374,245      | 9.06     | % |
| Total revenue  | 70,062,780      | 68,510,734      | 1,552,046    | 2.27     | % |
| <b>Operating Expenses:</b>   |                 |                 |              |          |   |
| Operating  | 17,219,273      | 16,532,417      | 686,856      | 4.15     | % |
| Maintenance  | 3,777,766       | 4,325,488       | (547,722 )   | (12.66 ) | % |
| Real estate taxes  | 7,215,711       | 7,115,666       | 100,045      | 1.41     | % |
| General and administrative   | 1,707,923       | 1,517,223       | 190,700      | 12.57    | % |
| Management fees  | 2,756,327       | 2,738,118       | 18,209       | 0.67     | % |
| Total operating expenses   | 32,677,000      | 32,228,912      | 448,088      | 1.39     | % |
| Net Operating Income   | 37,385,780      | 36,281,822      | 1,103,958    | 3.04     | % |
| <b>Non-operating expenses:</b>   |                 |                 |              |          |   |
| Depreciation   | 27,944,756      | 27,681,017      | 263,739      | 0.95     | % |
| Interest   | 23,637,097      | 23,090,981      | 546,116      | 2.37     | % |
| Amortization of acquired in-place leases and tenant relationships  | 19,473          | 181,534         | (162,061 )   | (89.27 ) | % |
| Total non-operating expenses   | 51,601,326      | 50,953,532      | 647,794      | 1.27     | % |
| Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations | (14,215,546)    | (14,671,710)    | 456,164      | 3.11     | % |
| Equity in loss of Multifamily Venture Limited Partnership  | -               | -               | -            | -        |   |
| Equity in loss of Mezzanine Loan Limited Liability Company   | -               | -               | -            | -        |   |
| Discontinued operations  | -               | -               | -            | -        |   |
| Net loss   | \$ (14,215,546) | \$ (14,671,710) | \$ 456,164   | 3.11     | % |

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|  | Total Portfolio<br>Year Ended December 31, |              |                         |             |             |
|--|--|--------------|-------------------------|-------------|-------------|
|  | 2009                                       | 2008         | Increase/<br>(Decrease) |             | %<br>Change |
| <b>Revenue:</b>  |  |              |                         |             |             |
| Rental   | \$74,043,952                               | \$65,441,106 | \$8,602,846             | 13.15       | %           |
| Interest, utility reimbursement and other  | 5,418,127                                  | 4,696,154    | 721,973                 | 15.37       | %           |
| Total revenue  | 79,462,079                                 | 70,137,260   | 9,324,819               | 13.30       | %           |
| <b>Operating Expenses:</b>   |  |              |                         |             |             |
| Operating  | 20,453,967                                 | 17,634,983   | 2,818,984               | 15.99       | %           |
| Maintenance  | 4,132,269                                  | 4,377,041    | (244,772 )              | (5.59 )     | %           |
| Real estate taxes  | 8,485,196                                  | 7,457,360    | 1,027,836               | 13.78       | %           |
| General and administrative   | 5,688,334                                  | 3,008,333    | 2,680,001               | 89.09       | %           |
| Management fees  | 4,770,659                                  | 4,487,677    | 282,982                 | 6.31        | %           |
| Total operating expenses   | 43,530,425                                 | 36,965,394   | 6,565,031               | 17.76       | %           |
| Net Operating Income   | 35,931,654                                 | 33,171,866   | 2,759,788               | 8.32        | %           |
| <b>Non-operating expenses:</b>   |  |              |                         |             |             |
| Depreciation   | 32,136,098                                 | 28,277,756   | 3,858,342               | 13.64       | %           |
| Interest   | 26,387,424                                 | 23,370,634   | 3,016,790               | 12.91       | %           |
| Amortization of acquired in-place leases and tenant relationships  | 827,930                                    | 474,258      | 353,672                 | 74.57       | %           |
| Total non-operating expenses   | 59,351,452                                 | 52,122,648   | 7,228,804               | 13.87       | %           |
| Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations | (23,419,798)                               | (18,950,782) | (4,469,016 )            | 23.58       | %           |
| Equity in loss of Multifamily Venture Limited Partnership  | (4,224,160 )                               | (3,696,790 ) | (527,370 )              | 14.27       | %           |
| Equity in (loss) income of Mezzanine Loan Limited Liability Company  | (947,294 )                                 | 92,293       | (1,039,587 )            | (1,126.40 ) | %           |
| Discontinued operations  | (175,072 )                                 | 77,179,208   | (77,354,280)            | (100.23 )   | %           |
| Net (loss) income  | \$(28,766,324)                             | \$54,623,929 | \$(83,390,253)          | (152.66 )   | %           |



Comparison of the year ended December 31, 2009 to the year ended December 31, 2008  
(Same Property Portfolio)

Revenue

Rental Revenue

Rental revenue of the Same Property Portfolio increased for the twelve-month period ended December 31, 2009 in comparison to the similar period in 2008. The increase is mainly attributable to increased occupancy as a result of the completion of the utility conversion at the Seasons of Laurel property where turnover and vacancies have been reduced and the completion and availability of renovated units destroyed by a fire at Country Place II and a hurricane at Walden Pond. Market conditions remain stable in the majority of the sub-markets in which the Company owns and operates apartments however the current economic environment has resulted in increased bad debts at certain properties in the portfolio. The Company continues to benefit from its focus on resident retention and property rehabilitation projects at various properties in the Same Property Portfolio where successful projects improve the consumer appeal and historically have yielded increased rental revenues as rehabilitated units become available for occupancy at the incrementally higher rental rates than the pre-rehabilitation levels. Given current economic conditions, the Company is prioritizing the retention of quality tenants in properties throughout the portfolio.

Interest, utility reimbursement and other revenue

Same Property Portfolio interest, utility reimbursement and other revenues increased for the twelve-month period ended December 31, 2009 as compared to the twelve-month period ended December 31, 2008. Increase in utility reimbursement is mainly due to successful increases in usage of bill back programs to tenants. Other revenues increased as a result of revenues from fees charged to tenants and potential tenants, including late fees, cable, valet trash and other similar revenue items.

Operating Expenses

Operating

Overall operating expenses increased in the twelve-month period ended December 31, 2009 as compared to the same period of 2008. The increase is mainly due to higher property insurance expenses as a result of the Company's property insurance coverage renewal in April 2009, higher utilities expenses including water and sewer and gas, offset by savings in electricity. The increase in water and sewer expenses is primarily due to an adjustment in 2009 to reclass the portions that relate to water and sewer from real estate expenses. Water and sewer expenses were billed collectively with real estate taxes by the various agents and were recorded as part of real estate expenses historically as a result. The Seasons of Laurel property has historically contributed significantly to the Company's overall utility expense as the electricity charges at the property have been paid by the Company and were not billed directly to tenants for usage of their apartment unit. The Company has completed a project to modify the utility infrastructure to allow for direct billing of electric costs by individual apartment units. The changes to the infrastructure were completed in the fourth quarter of 2008 with the related direct billing to tenants reaching full implementation in early 2009. As a result of the individual apartment units being migrated to a direct tenant billing, the Company has realized a reduction in electricity expense at Seasons and anticipates the reductions and related comparative savings to continue going forward.

Maintenance

Maintenance expense decreased in the twelve months ended December 31, 2009 as compared to the same period of 2008, due mainly to the Company's focus on expense controls during the challenging economic environment as well and to a lesser degree higher occupancy levels in the current year across the portfolio, specifically at the Seasons of Laurel, resulting in less turnover and related turnover expenses. The Company has focused efforts on containing expenses in an effort to maximize operating results and conserve capital during this period of unfavorable operating conditions. Reductions in expense items such as landscaping and contract labor reflect careful scrutiny of expenditures and deferral or elimination of the expense when appropriate. Also, the Company has focused on maintaining high occupancy levels through the recent challenging economic conditions and as a result has seen a reduction of expenses normally associated with turning over the units to new tenants such as painting and carpet cleaning. Management continues to employ a proactive maintenance rehabilitation strategy at its apartment communities and considers the strategy an effective program that preserves, and in some cases increases, its occupancy levels through improved consumer appeal of the apartment communities, from both an interior and exterior perspective. During the comparative periods, maintenance items of a non-recurring or annual nature have been carefully considered and in some cases delayed or eliminated in an effort to bolster operating results.

#### Real Estate Taxes

Real estate taxes increased for the year ended December 31, 2009 from the comparable period of 2008. The increase is due mainly to the continued escalation of assessed property valuations for properties in the Same Property Portfolio including properties located in Maryland. The Company continually scrutinizes the assessed values of its properties and avails itself of arbitration or similar forums made available by the taxing authority for increases in assessed value that it considers to be unreasonable. The Company has been successful in achieving tax abatements for certain of its properties based on challenges made to the assessed values. The Company anticipates a continued upward trend in real estate tax expense as local and state taxing agencies continue to place significant reliance on property tax revenue.

#### General and Administrative

General and administrative expenses increased in the twelve-month period ended December 31, 2009 compared to 2008. The increase is due to increases in legal expenses related to current tenant issues, service fees associated with the qualification of prospective tenants and increases in security expense at certain properties. The remainder of the net increase in expenses are related to normal operating expense fluctuations experienced throughout the properties of the Same Property Portfolio.

#### Management Fees

Management fees of the Same Property Portfolio increased slightly in the twelve-month period ended December 31, 2009 compared to the same period of 2008 based on increased level of revenues in the comparative periods. Property management fees are assessed on the revenue stream of the properties managed by an affiliate of the Company.

#### Non-Operating Expenses

##### Depreciation

Depreciation expense of the Same Property Portfolio increased for the twelve months ended December 31, 2009 as compared to the same period of the prior year. The increased expense is related to the additions to the basis of fixed assets in the portfolio driven by substantial rehabilitation projects ongoing at the Standard of Lenox and the Hampton House properties and to a lesser degree, normal recurring capital spending activities over the remaining properties in the Same Property Portfolio.

##### Interest

Interest expense for the twelve months ended December 31, 2009 increased over the comparable period of 2008. The increase is attributable to the refinancing of mortgages on properties at an incrementally higher principal level than the related paid-off loan. The majority of the increase is due to the pay off of the Briarwood loan balance of \$8,600,333 at maturity in April 2008 and a new loan on the same property that was obtained in October 2008, in addition to new mortgage loans on Berkshire of Columbia and BIR Laurel Wood properties that were closed in the first quarter of 2009.

Amortization of acquired in-place leases and tenant relationships

Amortization of acquired in-place-leases and tenant relationships decreased significantly in the twelve-month period ended December 31, 2009 as compared to the same period in 2008. The decrease is related mainly to the completion of amortization of the acquired-in-place-lease intangible assets booked at acquisition and amortized over a twelve-month period which did not extend into the twelve-month period ended December 31, 2009.

Comparison of the twelve months ended December 31, 2009 to the twelve months ended December 31, 2008  
(Total Property Portfolio)

In general, increases in revenues, operating expenses and non-operating expenses and the related losses of the Total Property Portfolio for the twelve months ended December 31, 2009 as compared to the twelve months ended December 31, 2008 are due mainly, in addition to the reasons discussed above, to the fluctuations in the actual properties owned during the comparative periods, as the net number of properties owned remained consistent as two properties were sold in 2008 and two properties were acquired or developed during 2009. Also, an increase in the level of mortgage and revolving credit debt outstanding during the comparative periods contributed to the expense increase. General and administrative expenses for the twelve months ended December 31, 2009 include costs associated with the acquisition of the Glo property expensed pursuant to the guidance of ASC 805-10 adopted by the Company on January 1, 2009 and costs paid for the judgment in the Lakeridge legal matter.

Comparison of year ended December 31, 2008 to the year ended December 31, 2007

The tables below reflect selected operating information for the Same Property Portfolio and the Total Property Portfolio for the years ended December 31, 2008 and 2007. The Same Property Portfolio consists of the 21 properties acquired or placed in service on or prior to January 1, 2007 and owned through December 31, 2008. The Total Property Portfolio includes the effect of the change in the 4 properties sold and 1 property acquired during the year. (The 2007 activity for the Century, St Marin, Westchester West, Westchase, Dorsey's and Trellis has been removed from the presentation as the results have been reflected as discontinued operations in the consolidated statements of operations.)

|  | Same Property Portfolio<br>Year Ended December 31, |               |                         |             |
|--|--|---------------|-------------------------|-------------|
|  | 2008   | 2007          | Increase/<br>(Decrease) | %<br>Change |
| <b>Revenue:</b>  |  |               |                         |             |
| Rental   | \$ 60,269,466                                      | \$ 58,089,828 | \$ 2,179,638            | 3.75 %      |
| Interest, utility reimbursement<br>and other                         | 3,628,118  | 3,400,716     | 227,402                 | 6.69 %      |
| Total revenue  | 63,897,584   | 61,490,544    | 2,407,040               | 3.91 %      |
| <b>Operating Expenses:</b>   |  |               |                         |             |
| Operating  | 15,371,423   | 15,994,931    | (623,508 )              | (3.90 )%    |
| Maintenance  | 3,971,232  | 3,746,444     | 224,788                 | 6.00 %      |
| Real estate taxes  | 6,682,882  | 5,845,679     | 837,203                 | 14.32 %     |
| General and administrative   | 1,175,514  | 1,190,164     | (14,650 )               | (1.23 )%    |
| Management fees  | 2,550,377  | 2,408,128     | 142,249                 | 5.91 %      |
| Total operating expenses   | 29,751,428   | 29,185,346    | 566,082                 | 1.94 %      |
| Net Operating Income   | 34,146,156   | 32,305,198    | 1,840,958               | 5.70 %      |
| <b>Non-operating expenses:</b>                                       |  |               |                         |             |
| Depreciation   | 25,113,006   | 24,347,200    | 765,806                 | 3.15 %      |
| Interest   | 20,606,777   | 20,139,595    | 467,182                 | 2.32 %      |
| Loss on extinguishment of debt                                       | -  | 316,702       | (316,702 )              | (100.00 )%  |
| Amortization of acquired in-place<br>leases and tenant relationships | 91,022   | 606,413       | (515,391 )              | (84.99 )%   |

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|  |                 |                 |              |       |   |
|--|-----------------|-----------------|--------------|-------|---|
| Total non-operating expenses   | 45,810,805      | 45,409,910      | 400,895      | 0.88  | % |
| Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations | (11,664,649)    | (13,104,712)    | 1,440,063    | 10.99 | % |
| Equity in loss of Multifamily Venture Limited Partnership  | -               | -               | -            | -     |   |
| Equity in loss of Mezzanine Loan Limited Liability Company   | -               | -               | -            | -     |   |
| Discontinued operations  | -               | -               | -            | -     |   |
| Net loss   | \$ (11,664,649) | \$ (13,104,712) | \$ 1,440,063 | 10.99 | % |



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|  | Total Portfolio<br>Year Ended December 31, |                     |                         |                 |
|--|--|---------------------|-------------------------|-----------------|
|  | 2008                                       | 2007                | Increase/<br>(Decrease) | %<br>Change     |
| <b>Revenue:</b>  |  |                     |                         |                 |
| Rental   | \$ 65,441,106                              | \$ 61,097,846       | \$ 4,343,260            | 7.11 %          |
| Interest, utility reimbursement and other  | 4,696,154                                  | 4,718,422           | (22,268 )               | (0.47 )%        |
| <b>Total revenue</b>   | <b>70,137,260</b>                          | <b>65,816,268</b>   | <b>4,320,992</b>        | <b>6.57 %</b>   |
| <b>Operating Expenses:</b>   |  |                     |                         |                 |
| Operating  | 17,634,983                                 | 17,594,304          | 40,679                  | 0.23 %          |
| Maintenance  | 4,377,041                                  | 3,977,859           | 399,182                 | 10.04 %         |
| Real estate taxes  | 7,457,360                                  | 6,148,643           | 1,308,717               | 21.28 %         |
| General and administrative   | 3,008,333                                  | 2,959,250           | 49,083                  | 1.66 %          |
| Management fees  | 4,487,677                                  | 4,208,626           | 279,051                 | 6.63 %          |
| <b>Total operating expenses</b>  | <b>36,965,394</b>                          | <b>34,888,682</b>   | <b>2,076,712</b>        | <b>5.95 %</b>   |
| <b>Net Operating Income</b>  | <b>33,171,866</b>                          | <b>30,927,586</b>   | <b>2,244,280</b>        | <b>7.26 %</b>   |
| <b>Non-operating expenses:</b>   |  |                     |                         |                 |
| Depreciation   | 28,277,756                                 | 25,838,371          | 2,439,385               | 9.44 %          |
| Interest   | 23,370,634                                 | 22,032,416          | 1,338,218               | 6.07 %          |
| Loss on extinguishment of debt   | -  | 316,702             | (316,702 )              | (100.00 )%      |
| Amortization of acquired in-place leases and tenant relationships  | 474,258                                    | 1,111,431           | (637,173 )              | (57.33 )%       |
| <b>Total non-operating expenses</b>  | <b>52,122,648</b>                          | <b>49,298,920</b>   | <b>2,823,728</b>        | <b>5.73 %</b>   |
| Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations | (18,950,782)                               | (18,371,334)        | (579,448 )              | (3.15 )%        |
| Equity in loss of Multifamily Venture Limited Partnership  | (3,696,790 )                               | (2,955,647 )        | (741,143 )              | (25.08 )%       |
| Equity in income of Mezzanine Loan Limited Liability Company   | 92,293                                     | -                   | 92,293                  | 100.00 %        |
| <b>Discontinued operations</b>   | <b>77,179,208</b>                          | <b>30,191,208</b>   | <b>46,988,000</b>       | <b>155.63 %</b> |
| <b>Net income</b>  | <b>\$ 54,623,929</b>                       | <b>\$ 8,864,227</b> | <b>\$ 45,759,702</b>    | <b>516.23 %</b> |



Comparison of the year ended December 31, 2008 to the year ended December 31, 2007  
(Same Property Portfolio)

#### Revenue

##### Rental Revenue

Rental revenue of the Same Property Portfolio increased for the twelve-month period ended December 31, 2008 in comparison to the similar period of 2007. The majority of the increase is attributable to properties that have completed major renovations in 2007 and are leasing the newly renovated units at premium rent levels and with rising the occupancy levels at the properties following the completion of the rehabilitation projects. Properties experiencing increased post rehabilitation rent levels include the Berkshire of Columbia in Maryland, Berkshire on Brompton in Texas and Berkshires at Lenox Park in Atlanta. Market conditions remain favorable in the majority of the sub-markets in which the Company owns and operates apartments however the current economic environment has resulted in increased bad debts at certain properties in the portfolio. The Company continues to benefit from its focus on resident retention and property rehabilitation projects at various properties in the Same Property Portfolio where successful projects improve the consumer appeal and historically have yielded increased rental revenues as rehabilitated units become available for occupancy at the incrementally higher rental rates than the pre-rehabilitation levels. Given current economic conditions, the Company is prioritizing the retention of quality tenants in properties throughout the portfolio.

##### Interest, utility reimbursement and other revenue

Same Property Portfolio interest, utility reimbursement and other revenues increased for the twelve-month period ended December 31, 2008 as compared to the twelve-month period ended December 31, 2007. Utility reimbursement increased, primarily due to normal fluctuations. Miscellaneous revenues increased due to revenues from the fees charged to tenants and potential tenants, including late fees, valet trash and other similar revenue items.

#### Operating Expenses

##### Operating

Overall operating expenses decreased in the twelve-month period ended December 31, 2008 as compared to the same period of 2007. The decrease is due mainly to normal fluctuations. The Company continued to realize savings from improved insurance premium levels when it renewed its property insurance coverage for the portfolio for the policy period as of May 1, 2007 when it was able to achieve modest cost reductions in premiums for its property insurance coverage. Further insurance cost reductions were achieved in 2008. The savings were partially offset by increases in some utilities, including electric and water and sewer, advertising publications and rubbish removal. The Seasons of Laurel property has historically contributed significantly to the Company's overall utility expense as the electricity charges at the property have been paid by the Company and were not billed directly to tenants for usage of their apartment unit. The Company has substantially completed a project to modify the utility infrastructure to allow for direct billing of electric costs by individual apartment unit. The changes to the infrastructure were completed in the fourth quarter of 2008 with the related direct billing to tenants as of the end of 2008. As a result of the individual apartments units being migrated to a direct tenant billing the Company has realized a reduction in electricity expense at Season's and anticipates the reductions and related comparative savings to continue going forward.

##### Maintenance

Maintenance expense increased in the twelve-months ended December 31, 2008 as compared to the same period of 2007 and is due mainly to higher unit turn over costs including painting, cleaning and non-recurring repairs and maintenance in an effort to make units as attractive as possible and to maintain occupancy. Management continues to employ a proactive maintenance rehabilitation strategy at its apartment communities and considers the strategy an effective program that preserves and in some cases increases, its occupancy levels through improved consumer appeal of the apartment communities, from both an interior and exterior perspective.

#### Real Estate Taxes

Real estate taxes increased for the twelve-months ended December 31, 2008 from the comparable period of 2007. The increase is due mainly to increased costs at numerous properties including the payment of a prior year liability for a property that was split into two separate parcel billings, one of which was not received and paid until 2008. Additionally, the Company continues to see a trend of escalation in assessed property valuations for properties across the portfolio as renovation projects are completed resulting in new values and the effects of continued reliance placed on local and state property tax revenues. The Company continually scrutinizes the assessed values of its properties and avails itself of arbitration or similar forums made available by the taxing authority for increases in assessed values that the Company considers to be unreasonable. The Company has had success in achieving tax abatements for certain of its properties based on challenges made to the assessed values and anticipates continued success with certain future challenges given the current economic climate.

## General and Administrative

General and administrative expenses decreased slightly in the twelve-month period ended December 31, 2008 compared to 2007. The overall decrease is due mainly to normal operating expense fluctuations experienced throughout the properties of the Same Property Portfolio including legal expense related to tenant issues. In addition, OneSite Payments expense, fees related to the administration of online rent payment processing has increased significantly due to higher volume of payments through OneSite as compared to the same period of 2007.

## Management Fees

Management fees of the Same Property Portfolio increased in the twelve-month period ended December 31, 2008 compared to the same period of 2007 based on a proportionate increased level of revenues in the comparative periods. Property management fees are assessed on the revenue stream of the properties managed by an affiliate of the Company.

## Non-Operating Expenses

### Depreciation

Depreciation expense of the Same Property Portfolio increased for the twelve-months ended December 31, 2008 as compared to the same period of 2007. The increased expense is related to the additions to the basis of fixed assets in the portfolio driven by substantial rehabilitation projects ongoing at the Seasons of Laurel, Hannibal Grove, Standard of Lenox and the Hampton House properties and to a lesser degree, normal recurring capital spending activities over the remaining properties in the Same Property Portfolio.

### Interest

Interest expense for the twelve-months ended December 31, 2008 increased slightly over the comparable period of 2007. The majority of the increase is attributable to the refinancing of a mortgage on the Berkshires on Brompton property at an incrementally higher principal level than the related paid-off loan, which was partially offset by the reduced interest rate obtained on the new debt. Additionally, new second mortgage debt on two properties that was not in place in the comparative period of 2007 also contributed to the increased interest expense.

### Amortization of acquired in-place leases and tenant relationships

Amortization of acquired in-place-leases and tenant relationships decreased significantly in the twelve-months ended December 31, 2008 as compared to the same period of 2007. The decrease is related mainly to the completion of amortization of the acquired-in-place lease intangible assets booked at acquisition and amortized over a 12 month period which did not extend into the twelve-months period ended December 31, 2008. The decreases were partially offset by the amortization of acquired in-place-leases and tenant relationships related to the new property, Executive House, which was acquired during the quarter ended December 31, 2008.

### Comparison of the twelve months ended December 31, 2008 to the twelve months ended December 31, 2007 (Total Property Portfolio)

In general, increases in revenues, operating expenses, non-operating expenses and the related losses of the Total Property Portfolio for the twelve months ended December 31, 2008 as compared to the twelve months ended December 31, 2007 are due mainly to the change in the mix of properties owned by the Company and the related periods of ownership of those properties in the comparative periods presented and to the increase in the level of mortgage and revolving credit debt outstanding during the comparative periods.



## Mortgage Debt to Fair Value of Real Estate Assets

The Company's total mortgage debt summary and debt maturity schedule, as of December 31, 2009 is as follows:

| Debt Summary                        |                |                       |
|-------------------------------------|----------------|-----------------------|
|                                     | Balance        | Weighted Average Rate |
| Collateralized – Fixed Rate Debt    | \$ 432,627,455 | 5.71 %                |
| Collateralized – Variable Rate Debt | 42,203,273     | 1.52 %                |
| Total - Collateralized Debt         | \$ 474,830,728 |                       |

| Debt Maturity Summary |                |            |
|-----------------------|----------------|------------|
| Year                  | Balance        | % of Total |
| 2010 (1)              | \$ 15,579,044  | 3.28 %     |
| 2011                  | 4,924,807      | 1.04 %     |
| 2012                  | 10,399,704     | 2.19 %     |
| 2013                  | 62,607,515     | 13.19 %    |
| 2014                  | 67,902,136     | 14.30 %    |
| Thereafter            | 313,417,522    | 66.00 %    |
| Total                 | \$ 474,830,728 | 100.00 %   |

(1)The supplemental mortgages outstanding and secured by the Glo property in the amount of \$12,210,000 mature in March 2010. As a requirement of the financing, the amounts maturing in 2010 are backed by irrevocable letters of credit in amounts sufficient to retire the debt. As a requirement of the irrevocable letters of credit, the issuing bank required corresponding cash be segregated to back the letters of credit. The segregated cash is reflected as restricted cash on the balance sheet as of December 31, 2009.

The Company's "Debt-to-Fair Value of Real Estate Assets" as of December 31, 2009 is presented in the following table. Fair value of real estate assets is based on management's best estimate. As with any estimate, management's estimate of the fair value of properties represents only its good faith opinion as to that value, and there can be no assurance that the actual value that might, in fact, be realized for any such property would approximate that fair value.

In establishing management's estimate of fair value of real estate assets management examines relevant market and operating data including, but not limited to, recent transactions in each market, operating results for each property, macro and micro-economic data from respected external sources at both a national and local level as well as actual local knowledge. Fair values are generally determined by using a number of analytical calculations, including discounting projected future cash flow, applying estimated market capitalization rates ("Cap-Rates") to current pro forma operating information and comparing per unit results with current replacement cost estimates. In the latter part of 2008 and continuing through out 2009, transaction volume dropped off dramatically from earlier years. Actual transactions are often used as a base line for determining Cap-Rates, however, with the drop in actual transactions especially late in the year, there was limited relevant actual data available for use in management's analysis. Management used verifiable third party data and its own market knowledge, taking into consideration the location of the property, recent renovation activity, the quality of the asset, its operating cash flows, its age and currently available long-term financing rates to arrive at the estimated Cap-Rates used in its fair value

analysis. Management generally applies lower Cap-Rates to high-rise than to garden style communities. Managements estimated comparative average Cap-Rate as of December 31, 2009 and 2008 was 6.92%. The lack of significant change in Cap-Rates from 2008 to 2009 is reflective of continued lack of buyer demand, lack of liquidity in the market, the economic downturn and the increase in interest rates on available mortgage debt, as well as changes in the availability of capital for purchasing multifamily real estate, especially late in 2008 and through out 2009. The impact of rising Cap-Rates on our portfolio was offset somewhat by increases in net operating income for 2009 at our properties.

The following information is presented in lieu of information regarding the Company's "Debt-to-Total Market Capitalization Ratio", which is a commonly used measure in our industry, because the Company's market capitalization is not readily determinable since there was no public market for its common equity during the periods presented in this report.

The Board has established investment guidelines under which management may not incur indebtedness such that at the time we incur the indebtedness our ratio of debt to total assets exceeds 75%. This measure is calculated based on the fair value of the assets determined by management as described above.

The information regarding "Debt-to-Fair Value of Real Estate Assets" is presented to allow investors to calculate our loan-to-value ratios in a manner consistent with those used by management and others in our industry, including those used by our current and potential lenders. Management uses this information when making decisions about financing or refinancing properties. Management also uses fair value information when making decisions about selling assets as well as evaluating acquisition opportunities within markets where we have assets.

Fair Value of Real Estate Assets is not a GAAP financial measure and should not be considered as an alternative to net book value of real estate assets, the most directly comparable financial measure calculated and presented in accordance with GAAP. At December 31, 2009 and 2008, the aggregate net book value of our real estate assets was \$441,983,721 and \$419,002,572, respectively, as compared to the fair values at December 31, 2009 and 2008 of \$659,266,000 and \$615,887,000, respectively, and is presented on the balance sheet as multifamily apartment communities, net of accumulated depreciation. The increase in the net book value of the portfolio is related mainly to the acquisition of the Glo property and the completion of the development of The Reserves at Arboretum Place property during 2009.

The increase in the fair values is due mainly to the incremental value derived from the acquisition of the Glo property and the completion of the development of The Reserves property. Prevailing economic forces continue to place downward pressure on property valuations which resulted in a net decrease in fair values for the Same Store properties during 2009. Both the Glo acquisition and The Reserves development were encumbered with new debt during 2009 which combined with the Same Store fair value decreases resulted in a higher debt-to-fair value of real estate assets ratio at December 31, 2009.

The following table reconciles the fair value of our real estate assets to the net book value of real estate assets as of December 31, 2009 and 2008.

|   | Debt-to-Fair Value of Real Estate Assets |                |
|---|--|----------------|
|   | 2009                                     | 2008           |
| Net book value of multifamily apartment communities | \$ 441,983,721                           | \$ 419,002,572 |
| Accumulated depreciation                            | 168,718,977                              | 136,678,464    |
| Historical cost                                     | 610,702,698                              | 555,681,036    |



|  |                |   |                |   |
|--|----------------|---|----------------|---|
| Increase in fair value<br>over historical cost | 48,563,302     |   | 60,205,964     |   |
| Fair Value – estimated                         | \$ 659,266,000 |   | \$ 615,887,000 |   |
| Mortgage Debt &<br>Notes Payable               | \$ 490,550,728 |   | \$ 432,013,999 |   |
| Debt-to-Fair Value of<br>Real Estate Assets    | 74.41          | % | 70.15          | % |

The debt-to-fair value of real estate assets includes outstanding borrowings under the revolving credit facility available from an affiliate of the Company of \$15,720,000 and \$0 at December 31, 2009 and 2008, respectively. The revolving credit facility available from an affiliate of the Company contains covenants that require the Company to maintain certain financial ratios, including an indebtedness to value ratio not to exceed 75%. If the Company were to be in violation of these covenants, we would be unable to draw advances from our line which could have a material impact on our ability to meet our short-term liquidity requirements. Further, if we were unable to draw on the line, we may have to slow or temporarily stop our rehabilitation projects, which could have a negative impact on our results of operations and cash flows. As of December 31, 2009 and 2008, the Company was in compliance with the covenants of the revolving credit facility available from an affiliate of the Company. Fair value of the real estate assets is based on the management most current valuation of properties, which was computed for all properties owned at December 31, 2009 and 2008.

The fair values are based on management's best estimate of current value for properties owned as of December 31, 2009 and 2008. Capital discounts rates used in management's estimates range from a low of 5.50% to a high of 8.00%. Estimated values of individual properties within the portfolio range from \$6,467,000 to \$138,793,000.

## Funds From Operations

The Company has adopted the revised definition of Funds from Operations (“FFO”) adopted by the Board of Governors of the National Association of Real Estate Investment Trusts (“NAREIT”). FFO falls within the definition of a “non-GAAP financial measure” as stated in Item 10(e) of Regulation S-K promulgated by the SEC. Management considers FFO to be an appropriate measure of performance of an equity REIT. We calculate FFO by adjusting net income (loss) (computed in accordance with GAAP, including non-recurring items), for gains (or losses) from sales of properties, real estate related depreciation and amortization, and adjustment for unconsolidated partnerships and ventures. Management believes that in order to facilitate a clear understanding of the historical operating results of the Company, FFO should be considered in conjunction with net income (loss) as presented in the consolidated financial statements included elsewhere herein. Management considers FFO to be a useful measure for reviewing the comparative operating and financial performance of the Company because, by excluding gains and losses related to sales of previously depreciated operating real estate assets and excluding real estate asset depreciation and amortization (which can vary among owners of identical assets in similar condition based on historical cost accounting and useful life estimates), FFO can help one compare the operating performance of a company’s real estate between periods or as compared to different companies.

The Company’s calculation of FFO may not be directly comparable to FFO reported by other REITs or similar real estate companies that have not adopted the term in accordance with the current NAREIT definition or that interpret the current NAREIT definition differently. FFO is not a GAAP financial measure and should not be considered as an alternative to net income (loss), the most directly comparable financial measure of our performance calculated and presented in accordance with GAAP, as an indication of our performance. FFO does not represent cash generated from operating activities determined in accordance with GAAP and is not a measure of liquidity or an indicator of our ability to make cash distributions. We believe that to further understand our performance; FFO should be compared with our reported net income (loss) and considered in addition to cash flows in accordance with GAAP, as presented in our consolidated financial statements.

The following table presents a reconciliation of net income (loss) to FFO for the years ended December 31, 2009, 2008 and 2007:

|  | December 31,    |               |              |
|--|-----------------|---------------|--------------|
|  | 2009            | 2008          | 2007         |
| Net income (loss)  | \$ (28,766,324) | \$ 54,623,929 | \$ 8,864,227 |
| Add:   |                 |               |              |
| Depreciation of real property  | 28,207,506      | 24,618,377    | 26,460,337   |
| Depreciation of real property included in results of discontinued operations                                     | -               | 3,335,613     | 528,907      |
| Amortization of acquired in-place leases and tenant relationships  | 827,930         | 474,258       | 1,111,431    |
| Amortization of acquired in-place leases and tenant relationships included in results of discontinued operations | -               | -             | 21,564       |
| Equity in loss of Multifamily Venture Limited Partnership  | 4,224,160       | 3,696,790     | 2,955,647    |
| Funds from operations of Multifamily Venture Limited Partnership   | 1,047,143       | 1,319,657     | 100,308      |
| Less:  |                 |               |              |

|  |              |              |              |
|--|--------------|--------------|--------------|
| Noncontrolling interest in properties share of funds from operations | (756,263 )   | (932,812 )   | (947,933 )   |
| Gain on disposition of real estate assets                            | -            | (79,487,487) | (32,111,239) |
| Funds from Operations  | \$ 4,784,152 | \$ 7,648,325 | \$ 6,983,249 |

FFO for the year ended December 31, 2009 decreased as compared to FFO for the year ended December 31, 2008. The decrease in FFO is due primarily to changes in the accounting for transaction costs under ASC 805-10 and the write-off of the Company's investment in the Mezzanine Loan LLC in the amount of \$1,117,825. ASC 805-10 requires that costs associated with acquisition transactions be expensed in the period incurred. Prior to the implementation of ASC 805-10, transaction costs were capitalized and included in the depreciable basis of acquired properties. Transaction costs for the acquisition of Glo Apartments total approximately \$1,183,299, which were included in General and Administrative expense on the Consolidated Statement of Operations. Additionally, payment of the judgment related to a matter ruled against the Company on appeal, of approximately \$747,992, also contributed to the decrease in FFO in the comparable years.

#### Environmental Issues

There are no recorded amounts resulting from environmental liabilities because there are no known contingencies with respect to environmental liabilities. The Company obtains environmental audits, through various sources including lender evaluations and acquisition due diligence, for each of its properties at various intervals throughout a property's life. The Company has not been advised by any third party as to the existence of, nor has it identified on its own, any material liability for site restoration or other costs that may be incurred with respect to any of its properties. The Company reevaluates potential environmental liabilities on an annual basis by reviewing the current properties in the portfolio at year end as the portfolio continues to change with the sale and acquisition of properties.

#### Inflation and Economic Conditions

Substantially all of the leases at the initial properties are for a term of one year or less, which enables the Company to seek increased rents for new leases or upon renewal of existing leases. These short-term leases minimize the potential adverse effect of inflation on rental income, although residents may leave without penalty at the end of their lease terms and may do so if rents are increased significantly.

While economists declared the worst recession to hit the United States since the 1930's to be over in late 2009, with policymakers efforts to stabilize the banking system and provide a fiscal stimulus to the economy, the high national unemployment rate remains a drag to a strong economic recovery. While there are many indications of stabilization in both domestic and foreign economies, the signs of robust recovery have yet to manifest themselves. Even if the recession is technically over, labor markets tend to recover with some lag, and it is only when labor markets stabilize that there will be an increase in household formation, which represents the greatest driver for rental apartments.

The Company both believes and recognizes that real estate goes through cycles and while the drivers of these cycles can vary greatly from cycle to cycle, the outcome is generally the same with periods of improving values and profit growth followed by periods of stagnant or declining values and profit stagnation. The Company recognizes, however, that real estate investing requires a long-term perspective and, as history suggests, a company's ability to remain resilient during tough economic times will often lead to opportunities. In general, multifamily real estate fundamentals of well located quality real estate remained relatively steady during the recent economic downturn. Occupancy rates continue to hover in the low to mid-90% range for well located, well managed properties though continued weakness in the economy and/or a lack of improvement in employment rates could have a negative impact on both occupancy and rent levels. Credit worthy borrowers in the multifamily sector have continued to be able to access capital through Fannie Mae and Freddie Mac, and other sources, through 2009 and into 2010 at historically attractive rates. Though there is no assurance that under existing or future regulatory restrictions this

source of capital, unique to multifamily borrowers, will continue to be available.

The Company continues to believe that projected demographic trends will favor the multifamily sector, driven primarily by the continued flow of echo boomers (children of baby boomers, age 20 to 29), the fastest growing segment of the population, and an increasing number of immigrants who are often renters by necessity. In many cases, the current economic climate has delayed many would be residents from entering the rental market and instead choosing to remain at home or to share rental units instead of renting their own space. This trend may be creating a backlog of potential residents who will enter the market as the economy begins to rebound and unemployment rates begin to trend back to historical norms. The Company's properties are generally located in markets where zoning restrictions, scarcity of land and high construction costs create significant barriers to new development. The Company believes it is well positioned to manage its portfolio through the remainder of this economic downturn and is prepared to take advantage of opportunities that present themselves during such times.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The tables below provide information about the Company's financial instruments that are sensitive to changes in interest rates, specifically debt obligations. The tables present principal cash flows and related weighted average interest rates by expected maturity dates for mortgage notes payable as of December 31, 2009 and 2008.

The following table reflects the mortgage notes payable as of December 31, 2009.

|                       | 2010         | 2011        | 2012        | 2013         | 2014         | Thereafter    | Total         |
|-----------------------|--------------|-------------|-------------|--------------|--------------|---------------|---------------|
| Fixed Rate Debt       | \$3,369,044  | \$4,924,807 | \$9,738,365 | \$61,802,741 | \$67,085,003 | \$285,707,495 | \$432,627,455 |
| Average Interest Rate | 5.29 %       | 5.53 %      | 5.74 %      | 5.08 %       | 5.51 %       | 5.90 %        | 5.71 %        |
| Variable Rate Debt    | \$12,210,000 | \$-         | \$661,339   | \$804,774    | \$817,133    | \$27,710,027  | \$42,203,273  |
| Average Interest Rate | 1.52 %       | 1.52 %      | 1.52 %      | 1.52 %       | 1.52 %       | 1.52 %        | 1.52 %        |

The following table reflects the mortgage notes payable as of December 31, 2008.

|                       | 2009         | 2010        | 2011        | 2012        | 2013         | Thereafter    | Total         |
|-----------------------|--------------|-------------|-------------|-------------|--------------|---------------|---------------|
| Fixed Rate Debt       | \$18,723,558 | \$3,372,626 | \$3,539,266 | \$7,444,714 | \$75,141,327 | \$323,792,508 | \$432,013,999 |
| Average Interest Rate | 5.19 %       | 5.25 %      | 5.24 %      | 5.62 %      | 5.14 %       | 5.82 %        | 5.64 %        |

The level of market rate interest risk increased during 2009. The increase relates mainly to incrementally higher levels of outstanding mortgage debt payable of \$474,830,728 at December 31, 2009 from the December 31, 2008 balance of \$432,013,999. Additionally, the market rate interest risk increase escalated due to incremental increases in the average interest rate of the outstanding debt over the same period. Additionally, the market rate interest risk increase can also be attributed to higher interest rates on fixed rate debt acquired and or assumed during the years ended December 31, 2009 and 2008 which was partially offset by variable interest rate debt assumed during 2009 that currently bears a low variable interest rate as of December 31, 2009.

The Company manages its interest rate risk on mortgage debt by monitoring the funding markets and the related changes in prevailing mortgage debt interest levels. Financing on new acquisitions, if applicable, is obtained at

prevailing market rates while mortgage debt interest rates on existing properties is monitored to determine if refinancing at current prevailing rates would be appropriate. The Company has been successful in obtaining new financing during the 2009 and 2008, a period in which the debt market has been challenged by unfavorable national economic conditions as well as declines in property values and the tightening of lending guidelines by creditors. The Company continues to take advantage of all opportunities to acquire long term debt at favorable interest rates via first mortgage refinancing, supplemental mortgage financing and assumption of debt with favorable terms pursuant to the acquisition of new properties.

As of December 31, 2009 and 2008, respectively, the Company had \$42,203,273 and \$0 of variable interest rate debt outstanding.

#### ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

See “Index to Consolidated Financial Statements and Financial Statement Schedules” on page 58 to this report.

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

None.

#### ITEM 9A(T). CONTROLS AND PROCEDURES

##### Disclosure Controls and Procedures

Based on their evaluation, required by the Securities Exchange Act Rules 13a-15(b) and 15d-15(b), the Company’s principal executive officer and principal financial officer have concluded that the Company’s disclosure controls and procedures (as defined in Securities Exchange Act Rules 13a-15(e) and 15d-15(e)) were effective as of December 31, 2009 to ensure that information required to be disclosed by the Company in reports that it files or submits under the Securities Exchange Act is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms and were effective as of December 31, 2009 to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Securities Exchange Act is accumulated and communicated to the Company’s management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

##### Management’s Annual Report on Internal Control Over Financial Reporting

The Company’s management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)). 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. The Company’s internal control over financial reporting is a process designed under the supervision of the Company’s principal executive officer and principal financial officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the Company’s financial statements for external reporting purposes in accordance with accounting principles generally accepted in the United States of America.

The Company's management, with oversight and input from the Company's principal executive officer and principal financial officer, conducted an assessment of the effectiveness of its internal control over financial reporting as of December 31, 2009. The Company's management based its assessment on the framework in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its evaluation under that framework, the Company's management concluded that the Company's internal control over financial reporting was effective as of December 31, 2009.

This annual report does not include an attestation report of the Company's registered public accounting firm regarding internal control over financial reporting. The Company's management's report was not subject to attestation by the Company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the Company to provide only its management's report in this annual report.

#### Changes in Internal Control over Financial Reporting

There were no other changes in the Company's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f)), identified in connection with the evaluation required by paragraph (d) of the Securities Exchange Act Rules 13a-15 or 15d-15 that occurred during the quarter ended December 31, 2009 that affected, or were reasonably likely to affect, the Company's internal control over financial reporting.

#### ITEM 9B. OTHER INFORMATION

None.

## PART III

## ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The Company's executive officers and directors are as follows:

| Name and age                | Position or Offices Held                           |
|-----------------------------|--|
| Douglas Krupp (63)          | Chairman of the Board of Directors                 |
| David C. Quade (66)         | President, Chief Financial Officer and Director    |
| Randolph G. Hawthorne (60)  | Director   |
| Robert M. Kaufman (60)      | Director   |
| Richard B. Peiser (61)      | Director   |
| Frank Apeseche (52)         | Vice President and Treasurer                       |
| Christopher M. Nichols (45) | Vice President, Controller and Assistant Secretary |
| Mary Beth Bloom (36)        | Vice President and Secretary                       |

Douglas Krupp, Director and Chairman of the Board of Berkshire Income Realty, Inc. since January 28, 2005. Mr. Krupp is also the co-founder and Vice-Chairman of our affiliate, the Berkshire Group, an integrated real estate and financial services firm engaged in real estate acquisitions, property management and investment sponsorship. The Berkshire Group was established as The Krupp Companies in 1969. Mr. Krupp served as Chairman of the Board of Trustees of both Krupp Government Income Trust I & Krupp Government Income Trust II from 1991-2005. Formerly, Mr. Krupp served as Chairman of the Board of Directors of Berkshire Realty Company, Inc. and Harborside Healthcare Company, two publicly traded companies on the NYSE Amex. Mr. Krupp is a member of the Anti-Defamation League's National Executive Committee, a member of its Board of Trustees and Vice President of the ADL Foundation. Mr. Krupp is on the Board of Directors for The Commonwealth Shakespeare Company, a Member of the Corporation of Partners HealthCare System and a past member of the Board of Directors for Brigham & Women's Hospital. Mr. Krupp is a graduate of Bryant College. In 1989, he received an Honorary Doctorate of Science in Business Administration from this institution and was elected trustee in 1990.

David C. Quade, Director, President and Chief Financial Officer of Berkshire Income Realty, Inc. since July 19, 2002. Since December of 1998, Mr. Quade has been Executive Vice President and Chief Financial Officer of The Berkshire Group and Berkshire Property Advisors, LLC, both affiliates of Berkshire Income Realty. During that period, he led the efforts to acquire, finance and asset manage the initial properties contributed by KRF Company in connection with the Offering. Previously, Mr. Quade was a Principal and Executive Vice President and Chief Financial Officer of Leggat McCall Properties from 1981-1998, where he was responsible for strategic planning, corporate and property financing and asset management. Before that, Mr. Quade worked in senior financial capacities for two NYSE Amex listed real estate investment trusts, North American Mortgage Investors and Equitable Life Mortgage and Realty Investors. He also worked at Coopers & Lybrand, LLP (now known as PricewaterhouseCoopers, LLP), an international accounting and consulting firm. He has a Professional Accounting Program degree from Northwestern University Graduate School of Business. Mr. Quade also holds a Bachelor of Science degree and a Master of Business Administration degree from Central Michigan University. Mr. Quade also serves as Chairman of the Board of Directors of the Marblehead/Swampscott YMCA and Director of the North Shore YMCA.

Randolph G. Hawthorne, Director of Berkshire Income Realty, Inc. since October 15, 2002. Mr. Hawthorne is currently the Principal of a private investment and consulting firm known as RGH Ventures and has served as such since January of 2001. Mr. Hawthorne is a member of the Multifamily Council Blue Flight of the Urban Land



Institute, and is active in the National Multi Housing Council, which he led as the Chairman from 1996-1997. He also presently serves on the Board of Directors of the National Housing Conference and previously served as an independent member of the Advisory Board of Berkshire Mortgage Finance, a former affiliate of the Berkshire Income Realty, Inc. Mr. Hawthorne has previously served as President of the National Housing and Rehabilitation Association and has served on the Editorial Board of the Tax Credit Advisor and Multi-Housing News. From 1973-2001, Mr. Hawthorne was a Principal and Owner of Boston Financial, a full service real estate firm, which was acquired in 1999 by Lend Lease, a major global real estate firm, which at that time was the largest U.S. manager of tax-exempt real estate assets. During his 28 years with Boston Financial and then Lend Lease, Mr. Hawthorne served in a variety of senior leadership roles including on the Boston Financial Board of Directors. Mr. Hawthorne holds a Master of Business Administration degree from Harvard University and a Bachelor of Science degree from the Massachusetts Institute of Technology. Mr. Hawthorne is a Trustee of The Berkshire Theatre Festival, and serves on the Board of Directors of the Celebrity Series of Boston and The Boston Home.

Robert M. Kaufman, Director of Berkshire Income Realty, Inc. since October 15, 2002. Mr. Kaufman is currently the Senior Vice President and Chief Operating Officer of Outcome Sciences, Inc., which is the leading provider of strategies and solutions to meet the needs of the post-approval market. Mr. Kaufman was formerly the President and Chief Operating Officer of Oakley Investment, Inc. (formerly Phoenix Ltd.), a private investment firm, and held this position from November of 2003 thru March of 2007. Mr. Kaufman was a founder and the Chief Executive Officer of Medeviv, Inc., a healthcare technology company, from 2000-2002. From 1996-1999, Mr. Kaufman served as Chief Executive Officer of a senior housing company known as Carematrix Corp. and in 1999 served as a consultant to Carematrix Corp. Prior to that, Mr. Kaufman worked for Coopers & Lybrand, LLP (now known as PricewaterhouseCoopers, LLP), an international accounting and consulting firm, from 1972-1996. During his tenure at Coopers & Lybrand, he was a partner from 1982-1996 primarily servicing real estate and healthcare industry clients and served as a member of the National Board of Partners. In addition, while a partner at Coopers & Lybrand, Mr. Kaufman was a member of the Mergers and Acquisitions and Real Estate Groups, the Associate Chairman of the National Retail and Consumer Products Industry Group and was a National Technical Consulting Partner. Mr. Kaufman received his Bachelor of Arts from Colby College and his Master of Business Administration degree from Cornell University.

Richard B. Peiser, Director of Berkshire Income Realty, Inc. since October 15, 2002. Mr. Peiser is currently the Michael D. Spear Professor of Real Estate Development at Harvard University and has worked in that position since 1998. Mr. Peiser is also a member of the Department of Urban Planning and Design in the Harvard University Graduate School of Design and has served as such since 1998. Mr. Peiser also serves as Director of the university-wide Real Estate Academic Initiative at Harvard University. Before joining the faculty of Harvard University in 1998, Mr. Peiser served as Director of the Lusk Center of Real Estate Development from 1987-1998 as well as Founder and Academic Director of the Master of Real Estate Development Program at the University of Southern California from 1986-1998. Mr. Peiser has also worked as a real estate developer and consultant since 1978. In addition, Mr. Peiser has published numerous articles relating to various aspects of the real estate industry. Mr. Peiser taught at Southern Methodist University from 1978-1984, the University of Southern California from 1985-1998 and at Stanford University in the fall of 1981. Mr. Peiser has been a trustee of the Urban Land Institute since 1997, a Faculty Associate of the Eliot House since 1998 and a Director of the firm American Realty Advisors since 1998. Additionally, Mr. Peiser served as a faculty representative on the Harvard University Board of Overseer's Committee on Social Responsibility from 1999-2002 and was co-editor of the Journal of Real Estate Portfolio Management during 2002. Mr. Peiser holds a Bachelor of Arts degree from Yale University, a Master of Business Administration degree from Harvard University and a Ph.D. in land economics from Cambridge University.

Frank Apeseche, Vice President and Treasurer of Berkshire Income Realty, Inc. since July 19, 2002. Mr. Apeseche is also President and Managing Partner of The Berkshire Group, an affiliate of Berkshire Income Realty, Inc. Mr. Apeseche was President and Chief Executive Officer of our affiliate, BG Affiliate, from 1995-2000. Mr. Apeseche was Chief Financial Officer of The Berkshire Group from 1993-1995 and Vice President and Treasurer of Berkshire Realty Company, Inc. from 1993-1994. Mr. Apeseche was the Chief Planning Officer of the Berkshire Group from 1986-1993. Before joining The Berkshire Group in 1986, Mr. Apeseche was a manager with ACCENTURE

(formerly Andersen Consulting) where he specialized in providing technology solutions to Fortune 500 clients. Mr. Apeseche received a Bachelor of Arts degree with distinction from Cornell University and a Master of Business Administration degree with Honors from the University of Michigan.

Christopher M. Nichols, Vice President, Controller and Assistant Secretary of Berkshire Income Realty, Inc. since July 19, 2002. Mr. Nichols currently holds the position of Vice President, Controller and Assistant Secretary of Berkshire Income Realty, Inc. Mr. Nichols is also the Company's Principal Accounting Officer. Mr. Nichols joined The Berkshire Group in 1999 as the Assistant Corporate Controller. Before joining the Company, Mr. Nichols served as the Accounting Manager and then as the Corporate Controller for Mac-Gray Corporation from 1997-1999, a NYSE Amex listed company. At Mac-Gray, Mr. Nichols had primary oversight of the accounting and financial reporting systems. Mr. Nichols worked as a Senior Staff Auditor for Mullen & Company from 1994-1997. Mr. Nichols has a Bachelor of Science degree in Accountancy from Bentley College as well as Associate Degrees in Computer Information Systems and in Electrical Engineering. Mr. Nichols is a Certified Public Accountant.

Mary Beth Bloom, Vice President and Secretary of Berkshire Income Realty, Inc. since August 9, 2005. Ms. Bloom currently serves and has served as Vice President and General Counsel to The Berkshire Group, an affiliate of Berkshire Income Realty, Inc. since 2005. From 2000-2005, Ms. Bloom served as the Assistant General Counsel to The Berkshire Group and from 2003-2005, she served as Assistant Secretary to Berkshire Income Realty, Inc. Prior to joining The Berkshire Group, Ms. Bloom was an attorney with John Hancock Financial Services. She received a Bachelor of Arts from the College of the Holy Cross and a Juris Doctor from New England School of Law. Ms. Bloom is admitted to practice law in Massachusetts and New York and is a member of the American, Massachusetts and New York Bar Associations.

The Board has determined that Robert Kaufman, Randolph Hawthorne and Richard Peiser, a majority of our directors, are independent under applicable SEC and NYSE Amex rules and regulations. Such persons act as the Company's Audit Committee. The Board has determined that Robert Kaufman qualifies as an "audit committee financial expert" under applicable SEC rules and regulations.

The Company does not currently have a nominating committee as the Board has determined, given its relatively small size, that Robert Kaufman, Randolph Hawthorne and Richard Peiser, (the "Independent Directors") shall perform this function. Nominees for positions on the Board are identified and recommended by a majority of the Independent Directors on the Board (as defined in the NYSE Amex listing requirements). Director candidates, including Directors up for re-election and those nominated by Shareholders entitled to vote for the election of directors, are considered based upon various criteria, including broad-based business and professional skills and experience, personal integrity, sound business judgment, community involvement, and time available to devote to Board activities. The 5 nominees approved by the Board are Directors standing for re-election. The Company has not paid a fee to any third party to identify or evaluate or assist in identifying or evaluating potential nominees. The Board did not receive a Director candidate recommendation from a shareholder that beneficially owned more than 5% of the Company's common voting shares or from a group of shareholders that beneficially owned, in the aggregate, more than 5% of the Company's common voting shares. The Board will consider Director candidates recommended by shareholders entitled to vote for the election of directors.

A shareholder entitled to vote for the election of directors, who wishes to recommend a prospective nominee for the Board should notify the Company's Secretary in writing at One Beacon Street, Suite 1500, Boston, MA 02108 with the identity of the nominator and nominee, the biographical information for each nominee, a description of business and personal experience for each nominee, a written consent from the nominee to serve as a Director if so elected and any other information that the voting shareholder considers appropriate at least 90 days prior to the annual meeting at which Directors are to be elected.

The Company has adopted a code of ethics (the "Code") that applies to all of its employees (including its principal executive officers, principal financial officer and principal accounting officer) and directors. The Company intends to satisfy the disclosure requirement under Item 10 of Form 8-K regarding an amendment to, or waiver from, a provision of the Code applicable to certain enumerated executive officers by posting such information on its website at <http://www.berkshireincomerealty.com>. The Company shall provide to any person without charge, upon request, a copy of the Code. Any such request must be made in writing to the Company, c/o James Juliano, One Beacon Street, Boston, MA 02108.

#### SECTION 16 (a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Based solely on a review of reports furnished to the Company or written representations from the Company's directors, executive officers and 10% stockholders, during the fiscal year ended December 31, 2009 and prior fiscal years, except as noted below, none of the Company's directors, executive officers and 10% stockholders failed to file on a timely basis any reports required to be filed pursuant to Section 16 of the Securities Exchange Act of 1934, as amended.

Randolph Hawthorne, a director filed a Form 4 on an untimely basis on March 16, 2010 that covered his purchase, that took place on March 13, 2009, of 100 shares of the Company's 9% Series A Cumulative Redeemable Preferred Stock. Additionally, David Quade, a director and executive officer filed two Form 4's on an untimely basis on April 30, 2009 and November 17, 2009, respectively, that covered purchases made by his spouse, that took place on April 21, 2009 and November 9, 2009, respectively, of 300 and 65 shares, respectively, of the Company's 9% Series A Cumulative Redeemable Preferred Stock.

#### ITEM 11. EXECUTIVE COMPENSATION

The Company does not currently have a compensation committee as the Board has determined that in light of the fact that except for our independent directors identified above, our executive officers and directors are not compensated by us for their services to us as officers and directors. However, certain of our officers and directors are compensated by our advisor, Berkshire Advisor, for their services to Berkshire Advisor. The Company has no employees under any employment or other agreement either formal or implied. The Company pays Berkshire Advisor, an affiliate, property and asset management fees for services related to the management of the Company. The Company also reimburses Berkshire Advisor for the salaries of employees of the Advisor who work directly at our properties. The Company does not bear risk associated with compensation policies and practices of employees as employee related costs incurred by the Advisor are limited to the fixed management fees or cost reimbursements paid by the Company. Refer to Part IV Item 15 - Notes to the Consolidated Financial Statements, Footnote 13 – Related Party transaction for additional information.

| Name and Principal Position | Year | Salary (\$) | Bonus (\$) | Stock Awards (\$) | Option Awards (\$) | Non-Equity Incentive Plan Compensation | Change in Pension Value | All Other Compensation (\$) | Total (\$) |
|-----------------------------|------|-------------|------------|-------------------|--------------------|--|-------------------------|-----------------------------|------------|
|                             |      |             |            |                   |                    |  |                         |                             |            |

(\$) and  
Nonqualified  
Deferred  
Compensation  
Earnings(\$)

|     |     |      |      |      |      |      |      |      |      |
|-----|-----|------|------|------|------|------|------|------|------|
| N/A | N/A | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
|     |     | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |

The Board has determined that Robert Kaufman, Randolph Hawthorne and Richard Peiser, a majority of our directors, are independent under applicable SEC and NYSE Amex rules and regulations. The Board has determined that the independent directors will be compensated at the rate of \$30,000 per year, payable in cash, for their service as directors and receive reimbursement for their travel expenses incurred in connection with Board duty. There were no other arrangements to compensate the directors for Board or committee involvement in 2009.

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

The following table sets forth information regarding the beneficial ownership of our equity securities as of December 31, 2009 by (1) each person who is known by us to beneficially own five percent or more of any class of our equity securities, (2) each of our directors and executive officers and (3) all of our directors and executive officers as a group. The address for each of the persons named in the table is One Beacon Street, Suite 1500, Boston, Massachusetts 02108.

| Title of Class       | Name and Address of Beneficial Owner (1) | Amount and Nature of Beneficial Ownership | Percent of Class |
|----------------------|--|---|------------------|
| Class B Common Stock | Douglas Krupp                            | 1,283,313(2)                              | 91 %             |
| Class B Common Stock | George Krupp                             | 1,283,313(3)                              | 91 %             |
| Class B Common Stock | Douglas Krupp 1980 Family Trust          | 1,283,313(4)                              | 91 %             |
| Class B Common Stock | George Krupp 1980 Family Trust           | 1,283,313(5)                              | 91 %             |
|                      | Krupp Family Limited                     |   |                  |
| Class B Common Stock | Partnership-94                           | 1,283,313(6)                              | 91 %             |
| Class B Common Stock | KRF Company                              | 1,283,313                                 | 91 %             |
| Class B Common Stock | Thomas Shuler                            | 63,560                                    | 5 %              |
| Class B Common Stock | David Olney                              | 59,323                                    | 4 %              |
|                      | All directors and executive officers     |   |                  |
| Class B Common Stock | as a group                               | 1,406,196(7)                              | 100 %            |
| Preferred Shares     | Robert M. Kaufman                        | 74,573 (8)                                | 5 %              |
| Preferred Shares     | Thomas Shuler                            | 6,760                                     | *                |
| Preferred Shares     | Randolph G. Hawthorne                    | 4,600                                     | *                |
| Preferred Shares     | Richard B. Peiser                        | 2,955                                     | *                |
| Preferred Shares     | David C. Quade                           | 1,434 (9)                                 | *                |
| Preferred Shares     | Mary Beth Bloom                          | 1,150                                     | *                |

\* - Represents less than 1% of shares outstanding in class.

(1) c/o The Berkshire Group, One Beacon Street, Suite 1500, Boston, MA 02108.

- (2) Includes 1,283,313 shares owned by KRF Company. The Krupp Family Limited Partnership-94 owns 100% of the limited liability company interests in KRF Company. The general partners of Krupp Family Limited Partnership-94 are George Krupp and Douglas Krupp, who each own 50% of the general partnership interests in Krupp Family Limited Partnership-94. By virtue of their interests in the Krupp Family Limited Partnership-94, George Krupp and Douglas Krupp may each be deemed to beneficially own the 1,283,313 shares of Class B common stock owned by KRF Company. Douglas Krupp is also a director of the Company. George Krupp is a former director of the Company.
- (3) Includes 1,283,313 shares owned by KRF Company that may be deemed to be beneficially owned by George Krupp, as described in Footnote (2).
- (4) Includes 1,283,313 shares owned by KRF Company. The Krupp Family Limited Partnership-94 owns 100% of the limited liability company interests in KRF Company. The Douglas Krupp 1980 Family Trust owns 50% of the limited partnership interests in Krupp Family Limited Partnership-94. By virtue of its interest in The Krupp Family Limited Partnership-94, The Douglas Krupp 1980 Family Trust may be deemed to beneficially own the 1,283,313 shares of Class B common stock owned by KRF Company. The trustee of the Douglas Krupp 1980 Family Trust is Robert Dombroff. The trustee controls the power to dispose of the assets of the trust and thus may be deemed to beneficially own the 1,283,313 shares of Class B common stock owned by KRF Company; however, the trustee disclaims beneficial ownership of all of those shares that are or may be deemed to be beneficially owned by Douglas Krupp or George Krupp.
- (5) Includes 1,283,313 shares owned by KRF Company. The Krupp Family Limited Partnership-94 owns 100% of the limited liability company interests in KRF Company. The George Krupp 1980 Family Trust owns 50% of the limited partnership interests in Krupp Family Limited Partnership-94. By virtue of its interest in The Krupp Family Limited Partnership-94, The George Krupp 1980 Family Trust may be deemed to beneficially own the 1,283,313 shares of Class B common stock owned by KRF Company. The trustee of the George Krupp 1980 Family Trust is Robert Dombroff. The trustee controls the power to dispose of the assets of the trust and thus may be deemed to beneficially own the 1,283,313 shares of Class B common stock owned by KRF Company; however, the trustee disclaims beneficial ownership of all of those shares that are or may be deemed to be beneficially owned by Douglas Krupp or George Krupp.
- (6) Includes 1,283,313 shares owned by KRF Company. Krupp Family Limited Partnership-94 owns 100% of the limited liability company interests in KRF Company. By virtue of its interest in KRF Company, Krupp Family Limited Partnership-94 is deemed to beneficially own the 1,283,313 shares of Class B common stock owned by KRF Company.
- (7) Includes 1,283,313 shares owned by KRF Company that may be deemed to be beneficially owned by Douglas Krupp, as described in Footnote (2).
- (8) Robert M. Kaufman does not own shares of Class B common stock. Mr. Kaufman does own 67,673 shares of the Preferred Shares of the Company. Additionally, 6,900 shares of the Preferred Shares are owned Mr. Kaufman's spouse and may be deemed to be beneficially owned by Mr. Kaufman.
- (9) David C. Quade does not own shares of Class B common stock. Mr. Quade does own 874 shares of the Preferred Shares of the Company. Additionally, 560 shares of the Preferred Shares are owned Mr. Quade's spouse and may be deemed to be beneficially owned by Mr. Quade.

Under our charter, we are authorized to issue 10,000,000 shares of our common stock, of which 5,000,000 shares have been classified as Class A Common Stock and 5,000,000 shares have been classified as Class B Common Stock. As of December 31, 2009 and 2008, we had 1,406,196 shares of our Class B common stock outstanding, the majority of which is owned by KRF Company, and no outstanding shares of Class A Common Stock.

Each share of Class B Common Stock entitles the holder to ten votes per share, and each share of Class A Common Stock entitles the holder to one vote per share, on all matters to be submitted to the stockholders for vote. Each share of Class B Common Stock is convertible, at the option of the holder at any time, into one share of Class A Common Stock. The exclusive voting power of the Company's stockholders for all purposes (including amendments to the charter) is vested in the holders of our common stock. We may not issue shares of our Class A Common Stock unless the issuance has been approved by the affirmative vote of the holders of a majority of the shares of our outstanding Class B Common Stock.

The holders of our common stock are entitled to receive ratably such distributions as may be authorized from time to time on our common stock by the Board in its discretion from funds legally available for such distribution. In the event our liquidation, dissolution, winding-up or termination, after payment of all debt and other liabilities, each holder of our common stock is entitled to receive, ratably with each other holder of our common stock, all our remaining assets available for distribution to the holders of our common stock. Holders of our common stock have no subscription, redemption, appraisal or preemptive rights.

Under Maryland law, a Maryland corporation generally cannot dissolve, amend its charter, merge, sell all or substantially all of its assets, engage in a share exchange or engage in similar transactions outside the ordinary course of business, unless approved by the affirmative vote of stockholders holding at least two thirds of the shares entitled to vote on the matter. However, a Maryland corporation may provide in its charter for approval of these matters by a lesser percentage, but not less than a majority of all the votes entitled to be cast on the matter. Our charter provides for approval of these matters by the affirmative vote of a majority of the votes entitled to be cast on the matter.

The holders of our common stock have the exclusive right (except as otherwise provided in our charter) to elect or remove directors. The outstanding shares of our common stock are fully paid and nonassessable.

#### Equity Compensation Plan Information

The following table sets forth information as of December 31, 2009 about shares of our equity securities outstanding and available for issuance under equity compensation plans. The Company does not have equity securities outstanding or available for issuance under an equity compensation plan as of December 31, 2009.

| Plan Category | Number of securities to be issued upon exercise of outstanding options, warrants and rights | Weighted-average exercise price of outstanding options, warrants and rights | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column |
|---------------|---|---|--|
|               |   |   |  |

|  | Column<br>(a) | Column (b) | (a)<br>Column<br>(c) |
|--|---------------|------------|----------------------|
| Equity compensation plan approved by security holders      | \$ -          | \$ -       | \$ -                 |
| Equity compensation plans not approved by security holders | -             | -          | -                    |
| Total  | \$ -          | \$ -       | \$ -                 |

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

## Management Fees

We have entered into an advisory services agreement with Berkshire Advisor. Douglas Krupp, one of our directors, together with his brother George Krupp (formerly a director of the Company and former Chairman of the Board), indirectly own substantially all of the member interests in Berkshire Advisor. Under the advisory services agreement, the Company will pay Berkshire Advisor an annual asset management fee equal to 0.40%, up to a maximum of \$1,600,000 in any calendar year, as per an amendment to the management agreement, of the purchase price of real estate properties owned by us, as adjusted from time to time to reflect the then current fair market value of the properties. The purchase price is defined as the capitalized basis of an asset under GAAP including renovation of new construction costs, costs of acquisition or other items paid or received that would be considered an adjustment to basis. The purchase price does not include acquisition fees and capital costs of a recurring nature. Berkshire Advisor may propose adjustments to the asset management fee, subject to the approval of the Audit Committee (which committee is comprised of directors who are independent under applicable rules and regulations of the SEC and NYSE Amex).

The asset management fees payable to Berkshire Advisor are payable quarterly, in arrears, and may be paid only after all distributions currently payable on the Company's Preferred Shares have been paid. Berkshire Advisor earned asset management fees of \$1,649,256, \$1,673,441 and \$1,673,446 during 2009, 2008 and 2007, respectively.

The amounts in excess of the \$1,600,000 maximum payable by the Company represent fees incurred and paid by the noncontrolling partners in the properties. As of December 31, 2009 and 2008, respectively, \$412,316 and \$418,360 of the asset management fees are payable to Berkshire Advisor.

During 2009, 2008 and 2007, Berkshire Advisor, an affiliate of The Berkshire Group, acted as property manager under property management agreements between the Company and Berkshire Advisor. Under the property management agreement, Berkshire Advisor is entitled to receive a property management fee, payable monthly, equal to 4% of the gross rental receipts, including rentals and other operating income, received each month with respect to all managed properties. The total amount of property management fees paid or accrued to Berkshire Advisor under the property management agreements was \$3,041,240, \$3,335,681 and \$3,374,992 for the years ended December 31, 2009, 2008 and 2007, respectively. As of December 31, 2009 and 2008, respectively, \$346,257 and \$572,801 of the 2009 and 2008 property management fees are payable to Berkshire Advisor.

Berkshire Advisor is also entitled to receive an acquisition fee equal to 1% of the purchase price (as defined above) of any new property acquired directly or indirectly by us. Berkshire Advisor may propose adjustments to the acquisition fee, subject to the approval of the Audit Committee of the Board (which committee is comprised of directors who are independent under applicable rules and regulations of the SEC and NYSE Amex).

Berkshire Advisor received acquisition fees for 2009, 2008 and 2007 as follows:

|                 | Acquisition<br>Fee<br>2009 | Acquisition<br>Fee<br>2008 | Acquisition<br>Fee<br>2007 |
|-----------------|----------------------------|----------------------------|----------------------------|
| Glo             | \$ 427,500                 | \$ -                       | \$ -                       |
| Executive House | -                          | 500,000                    | -                          |
| Hampton House   | -                          | -                          | 205,000                    |



|                |            |            |            |
|----------------|------------|------------|------------|
| Sunfield Lakes | -          | -          | 242,250    |
|                | \$ 427,500 | \$ 500,000 | \$ 447,250 |

Pursuant to the Company's adoption of ASC 805-10 as of January 1, 2009, the acquisition fee paid to Berkshire Advisor on the GLO acquisition was charged to operating expenses for the year ended December 31, 2009. The acquisition fees paid in 2008 and 2007, have been capitalized and are included in the caption "Multifamily apartment communities" in Part IV Item 15 – Consolidated Balance Sheets.

As of January 1, 2005, the Company pays a construction management fee to an affiliate, Berkshire Advisor, for services related to the management and oversight of renovation and rehabilitation projects at its properties. The Company paid or accrued \$438,965, \$612,312 and \$808,024 in construction management fees for the year ended December 31, 2009, 2008 and 2007, respectively. The fees are capitalized as part of the project cost in the year they are incurred.

The Company pays development fees to an affiliate, Berkshire Residential Development, for property development services. As of December 31, 2009, the Company has completed the development of the Arboretum Land development project and has incurred fees totaling \$902,500 for the project, of which of \$202,500 were incurred during the year ended December 31, 2009. The Company incurred \$300,000 and \$400,000 of development fees on the same project in the years ended December 31, 2008 and 2007, respectively. The fees, of which \$270,750 is related to predevelopment activities and \$631,750 is related to the development phase, are based on the project's development/construction costs. As of December 31, 2009 and 2008, \$202,500 and \$0, remained payable related to the project respectively.

Under the advisory services agreement and the property management agreements, Berkshire Advisor is reimbursed at cost for all out-of-pocket expenses incurred by them, including the actual cost of goods, materials and services that are used in connection with the management of us and our properties.

Berkshire Advisor also is reimbursed for administrative services rendered by it that are necessary for our prudent operation, including legal, accounting, data processing, transfer agent and other necessary services. Expense reimbursements paid were \$200,900, \$195,900 and \$250,596 for the years ended December 31, 2009, 2008 and 2007, respectively. Salary reimbursements paid were \$9,243,927, \$8,795,648 and \$9,380,153 for the years ended December 31, 2009, 2008 and 2007, respectively.

In addition to the fees listed above, the Multifamily Limited Partnership Venture paid construction management fees of \$570,602, \$3,118,380 and \$2,313,745, property management fees of \$5,841,648, \$5,637,868 and \$3,692,478 and asset management fees of \$4,763,937, \$3,282,256 and \$2,362,104 to Berkshire Advisor during 2009, 2008 and 2007, respectively.

On November 12, 2009, the Audit Committee of the Board of Directors (which committee is comprised of our three directors who are independent under applicable rules and regulations of the SEC and the NYSE Amex) approved an amendment to the Advisory Services Agreement with our Advisor, who is an affiliate of the Company, to add an additional variable incentive asset management fee component (the "Incentive Advisory Fee"), which will be based on the increase in value of the Company over a base value ("Base Value") as defined in the Amendment to the Advisory Service Agreement (the "Amendment") to be established as of December 31, 2009. The Amendment, which will become effective as of January 1, 2010, would require the Company to accrue an incentive asset management fee to the Advisor of 10% of the increase in value of the Company above the established Base Value (with a 12% cap if the formula exceeds 10% under certain circumstances).

The Incentive Advisory Fee is variable and therefore to the extent the value of the Company as defined in the Amendment decreases the accrued incentive fee would be reduced accordingly. At inception of the plan, January 1, 2010, the liability under the Amendment will be zero, and future liability will be based upon the growth of value of the Company over the Base Value.

The Advisor, Berkshire Property Advisors, LLC, has established an incentive compensation plan for its key employees for which future accrued liability will be equal to the accrued liability of the Incentive Advisory Services Fee. Payments under the plan are required when vested plan participants leave the Advisor and under certain other limited circumstances. Additional limits have been placed on the total amount of payments that can be made in any given year, with interest accruing at the rate of 7% on any payments due but not yet paid. The objective of the plan is to provide key management of the Advisor, which manages the Company, an incentive to grow the value of the company.

Related party arrangements are approved by the independent directors of the Company and are evidenced by a written agreement between the Company and the affiliated entity providing the services.

The Company does not have written policies and procedures for the review, approval or ratification of transactions with related persons. The Audit Committee (which committee is comprised of directors who are independent under applicable rules and regulations of the SEC and NYSE Amex) reviews and approves all related-party transactions. The review and approval responsibility of the Audit Committee is evidenced by the Audit Committee Charter.

#### Director Independence

The Board has determined that Robert Kaufman, Randolph Hawthorne and Richard Peiser, a majority of our directors, are independent under applicable SEC and NYSE Amex rules and regulations. Such persons act as the Company's Audit Committee, which does not include any non-independent directors of the Company.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Audit Fees

The aggregate fees billed for professional services rendered by our independent registered public accounting firm, PricewaterhouseCoopers L.L.P., was \$386,000 and \$363,400 for the years ended December 31, 2009 and 2008, respectively, for the audit of the Company's annual financial statements included in the Company's Form 10K and review of financial statements included in the Company's Forms and 10-Q.

Audit-Related Fees

The aggregate fees billed for assurance and related services by our independent registered public accounting firm, PricewaterhouseCoopers, L.L.P., was \$40,900 and \$13,652 for the years ended December 31, 2009 and 2008, respectively for Sarbanes-Oxley readiness procedures and the audit of certain subsidiaries.

Tax Fees

The aggregate fees billed for professional services rendered by our independent registered public accounting firm, PricewaterhouseCoopers, L.L.P., was \$52,725 and \$51,600 for the years December 31, 2009 and 2008, respectively, for tax compliance, tax advice, and tax planning.

All Other Fees

The aggregate fees billed for other services rendered by our independent registered public accounting firm, PricewaterhouseCoopers, L.L.P. was \$0 and \$0 for the years ended December 31, 2009 and 2008, respectively.

Before the Company's independent registered public accounting firm, PricewaterhouseCoopers, L.L.P., is engaged by the Company or its subsidiaries to render audit services, the engagement is approved by the Audit Committee, which is comprised solely of directors who are independent under applicable SEC and NYSE Amex rules. All audit-related fees, tax fees and other fees are pre-approved by such Audit Committee and are subject to a fee cap, which cannot exceed 5% of the total amount of the Company's revenues.

The percentage of services described above in the captions "Audit-Related Fees," "Tax Fees" and "All Other Fees" that were approved by the Audit Committee is 100%.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) See “Index to Financial Statements and Financial Statement Schedule” on page 58 to this report.

(b) Exhibits:  
Number and Description Under Regulation S-K

3.1 Articles of Amendment and Restatement of the Registrant (Incorporated by reference to Exhibit No. 3.1 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

3.2 By laws of the Registrant (Incorporated by reference to Exhibit No. 3.2 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.1 Amended and Restated Agreement of Limited Partnership of Berkshire Income Realty - OP, L.P. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.2 Contribution and Sale Agreement among KRF Company, L.L.C., KRF GP, Inc., Berkshire Income Realty - OP, L.P. and BIR Sub, L.L.C. (Incorporated by reference to Exhibit No. 10.2 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.3 Advisory Services Agreement between the Registrant and Berkshire Real Estate Advisors, L.L.C. (Incorporated by reference to Exhibit No. 10.3 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.4 Property Management Agreement between KRF3 Acquisition Company, L.L.C. and BRI OP Limited Partnership dated January 1, 2002 (Incorporated by reference to Exhibit No. 10.4 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.5 Property Management Agreement between Walden Pond Limited Partnership and BRI OP Limited Partnership dated January 1, 2002 (Incorporated by reference to Exhibit No. 10.5 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.6 Property Management Agreement between KRF5 Acquisition Company, L.L.C. and BRI OP Limited Partnership dated January 1, 2002. (Incorporated by reference to Exhibit No. 10.6 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.7 Property Management Agreement between KRF3 Acquisition Company, L.L.C. and BRI OP Limited Partnership dated January 1, 2002 (Incorporated by reference to Exhibit No. 10.7 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.8 Property Management Agreement between Seasons of Laurel, L.L.C. and BRI OP Limited Partnership dated January 1, 2002. (Incorporated by reference to Exhibit No. 10.8 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

10.9

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Letter Agreement between Georgeson Shareholder Communications Inc., Georgeson Shareholder Securities Corporation and the Registrant (Incorporated by reference to Exhibit No. 10.9 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).

- 10.10 Waiver and Standstill Agreement, dated as of August 22, 2002, by and among Krupp Government Income Trust, Krupp Government Income Trust II, the Registrant and Berkshire Income Realty-OP, L.P. (Incorporated by reference to Exhibit No. 10.10 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).
- 10.11 Letter amending Waiver and Standstill Agreement, dated March 5, 2003, among Krupp Government Income Trust, Krupp Government Income Trust II, the Registrant and Berkshire Income Realty-OP, L.P. (Incorporated by reference to Exhibit No. 10.11 to the Registrant's Form 10-K for the fiscal year ended December 31, 2002).
- 10.12 Letter Agreement, dated November 1, 2002, by and among Aptco Gen-Par, L.L.C., WXI/BRH Gen-Par, L.L.C., BRE/Berkshire GP L.L.C and BRH Limited Partner, L.P. (Incorporated by reference to Exhibit No. 10.12 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).
- 10.13 Amended and Restated Voting Agreement among Krupp Government Income Trust, Krupp Government Income Trust II and Berkshire Income Realty, Inc. (Incorporated by reference to Exhibit No. 10.13 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).
- 10.14 Purchase and Sale Agreement dated September 2, 2004, between F.C. Trellis Associates, L.P. and BIR Trellis, L.L.C. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on November 17, 2004).
- 10.15 Purchase and Sale Agreement dated September 2, 2004, between F.C. Bridgewater Associates, L.P. and BIR Bridgewater, L.L.C. (Incorporated by reference to Exhibit No. 10.2 to the Registrant's Current Report on Form 8-K filed with the SEC on November 17, 2004).
- 10.16 Purchase and Sale Agreement dated September 2, 2004, between F.C. Arboretum Associates, L.P. and BIR Arboretum, L.L.C. (Incorporated by reference to Exhibit No. 10.3 to the Registrant's Current Report on Form 8-K filed with the SEC on November 17, 2004).
- 10.17 Purchase and Sale Agreement dated September 2, 2004, between F.C. Silver Hill Associates, L.P. and BIR Silver Hill, L.L.C. (Incorporated by reference to Exhibit No. 10.4 to the Registrant's Current Report on Form 8-K filed with the SEC on November 17, 2004).
- 10.18 Purchase and Sale Agreement dated September 2, 2004, between F.C. Arboretum Land Associates, L.P. and BIR Arboretum Development, L.L.C. (Incorporated by reference to Exhibit No. 10.5 to the Registrant's Current Report on Form 8-K filed with the SEC on November 17, 2004).
- 10.19 Purchase and Sale Agreement dated September 14, 2004, related to Arrowhead Apartments Associates Limited Partnership, between Capital Realty Investors-II Limited Partnership, C.R.H.C., Incorporated, BIR/ERI LP Arrowhead, L.L.C. and BIR/ERI GP Arrowhead, L.L.C. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on November 21, 2004).
- 10.20 Purchase and Sale Agreement dated September 14, 2004, related to Blackburn Limited Partnership, between Capital Realty Investors-II Limited Partnership, CRICO Limited Partnership of Burtonsville, BIR/ERI LP Country Place I, L.L.C. and CIR/ERI GP Country Place I, L.L.C. (Incorporated by reference to Exhibit No. 10.2 to the Registrant's Current Report on Form 8-K filed with the SEC on November 21, 2004).

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- 10.21 Purchase and Sale Agreement dated September 14, 2004, related to Second Blackburn Limited Partnership, between Capital Realty Investors-II Limited Partnership, CRICO Limited Partnership of Burtonsville, BIR/ERI LP Country Place II, L.L.C. and CIR/ERI GP Country Place II, L.L.C. (Incorporated by reference to Exhibit No. 10.3 to the Registrant's Current Report on Form 8-K filed with the SEC on November 21, 2004).
- 10.22 Purchase and Sale Agreement dated September 14, 2004, related to Moorings Apartments Associates Limited Partnership, between Capital Realty Investors-II Limited Partnership, C.R.H.C., Incorporated, BIR/ERI LP The Moorings, L.L.C. and BIR/ERI GP The Moorings, L.L.C. (Incorporated by reference to Exhibit No. 10.4 to the Registrant's Current Report on Form 8-K filed with the SEC on November 21, 2004).
- 10.23 Purchase and Sale Agreement dated December 9, 2004, between BRH Westchester, L.L.C., BRI OP Limited Partnership, Berkshire Income Realty - OP, L.P. and BIR Westchester, L.L.C. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on December 15, 2004).
- 10.24 Real Estate Sale Agreement dated December 15, 2004, between EQR - Yorktowne Vistas, Inc. and BIR Yorktowne, L.L.C. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on December 21, 2004).
- 10.25 Contract of Sale between Trivest Westpark L.P., as seller, and Berkshire Income Realty, Inc., as buyer, dated February 24, 2005. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on March 2, 2005).
- 10.26 Reinstatement and First Amendment to Contract of Sale dated March 18, 2005. (Incorporated by reference to Exhibit No. 10.2 to the Registrant's Current report on Form 8-K filed with the SEC on March 23, 2005).
- 10.27 Purchase and Sale Agreement between Berkshire Income Realty-OP, L.P. and Lake Ridge Apartments, LLC dated May 24, 2005. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on May 31, 2005).
- 10.28 Purchase and Sale Agreement between McNab KC 3 Limited Partnership and Bay Pompano Beach, LLC dated May 26, 2005. (Incorporated by reference to Exhibit No. 10.2 to the Registrant's Current report on Form 8-K filed with the SEC on May 31, 2005).
- 10.29 Revolving Credit Agreement dated as of June 30, 2005 among Berkshire Income Realty- OP, L.P., as the Borrower, Krupp Capital Associates, as the Lender, The Other Lenders Party Hereto and Krupp Capital Associates, as Administrative Agent. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on July 7, 2005).
- 10.30 Purchase and Sale Agreement between SCP Apartments, L.L.C., and Madison - Clinton - Tampa, L.L.C., each an Alabama limited liability company and Berkshire Income Realty-OP, L.P., a Delaware limited partnership or its nominee, dated August 3, 2005. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on August 9, 2005).
- 10.31 Agreement of Limited Partnership of Berkshire Multifamily Value fund, L.P., dated August 12, 2005. (Incorporated by reference to Exhibit No. 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2005).
- 10.32 Subscription Agreement between Berkshire Multifamily Value Fund, L.P., and Berkshire Income realty, Inc. dated August 12, 2005. (Incorporated by reference to Exhibit No. 10.4 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2005).



- 10.33 Letter agreement between Berkshire Multifamily Value Fund, L.P., and Berkshire Income Realty, Inc. dated August 12, 2005. (Incorporated by reference to Exhibit No. 10.5 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on November 14, 2005).
- 10.34 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. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on January 10, 2006).
- 10.35 Second Amendment to Purchase and Sale Agreement between Marina Mile, LLC and BIR I, LLC (collectively, "Seller") and Metro Real Estate Group, Inc. dated February 8, 2006. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on February 17, 2006).
- 10.36 Purchase and Sale Agreement between ING U.S.-Residential Fund, L.P., a Delaware limited partnership; and Berkshire Income Realty-OP, L.P., a Delaware limited partnership, dated November 10, 2006. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on November 16, 2006).
- 10.37 Amendment to Revolving Credit Agreement dated as of June 30, 2005 among Berkshire Income Realty- OP, L.P., as the Borrower, Krupp Capital Associates, as the Lender, The Other Lenders Party Hereto and Krupp Capital Associates, as Administrative Agent. (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current report on Form 8-K filed with the SEC on June 6, 2007).
- 10.38 Purchase and Sale Agreement between St. Marin/Karrington Limited Partnership, a Delaware limited partnership and Williams Asset Management, LLC, a Georgia limited liability company, dated February 26, 2008 (Incorporated by reference to Exhibit No. 10.1 to the Registrant's Current Report on Form 8-K filed with the SEC on May 2, 2008).
- 10.39 Purchase and Sale Agreement by and among EHGP, Inc., a Pennsylvania corporation, Eric Blumenfeld, an individual, EHA Acquisition, L.P., a Pennsylvania limited partnership, BIR Executive GP, L.L.C. and BIR Executive LP, L.L.C. (Incorporated by reference to Exhibit No. 99.1 to the Registrant's Current Report on Form 8-K filed with the SEC on August 13, 2008).
- 10.40 Purchase and Sale Agreement by and among Anthony W. Packer, an individual, Jerome D. Winnick, an individual, Shoreline/Marin LLC, a Delaware limited liability company, BIR Executive GP, L.L.C. and BIR Executive LP, L.L.C. (Incorporated by reference to Exhibit No. 99.2 to the Registrant's Current Report on Form 8-K filed with the SEC on August 13, 2008).
- 10.41 Purchase and Sale Agreement between BRI Westchester Limited Partnership, a Maryland limited partnership, and Home Properties, L.P., a New York limited partnership, dated September 10, 2008 (Incorporated by reference to Exhibit No. 99.1 to the Registrant's Current Report on Form 8-K filed with the SEC on September 16, 2008).
- 21.1 Subsidiaries of the Registrant (Incorporated by reference to Exhibit No. 21.1 to the Registrant's Registration Statement on Form S-11 (Registration No. 333-98571)).
- 31.1 Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.



32.1 Principal Executive Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

32.2 Principal Financial Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(c) Financial Statement Schedules

The information required by this item is set forth below in the financial statements included herein.

BERKSHIRE INCOME REALTY, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AND FINANCIAL STATEMENT SCHEDULES

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All other schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or notes thereto

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Berkshire Income Realty, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Berkshire Income Realty, Inc. and subsidiaries (the "Company") at December 31, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2009 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the Standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

As discussed in Note 12 to the consolidated financial statements, the Company changed the manner in which it accounts for non-controlling interests in 2009.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP

Boston, Massachusetts

March 31, 2010



BERKSHIRE INCOME REALTY, INC.  
CONSOLIDATED BALANCE SHEETS

|   | December 31,         |                      |
|---|----------------------|----------------------|
|   | 2009                 | 2008                 |
| <b>ASSETS</b>   |                      |                      |
| Multifamily apartment communities, net of accumulated depreciation of \$168,718,977 and \$136,678,464, respectively   | \$441,983,721        | \$419,002,572        |
| Cash and cash equivalents   | 17,956,617           | 24,227,615           |
| Cash restricted for tenant security deposits  | 1,875,771            | 1,851,400            |
| Cash restricted other   | 12,621,014           | -                    |
| Replacement reserve escrow  | 3,938,646            | 5,952,952            |
| Prepaid expenses and other assets   | 10,092,883           | 9,314,446            |
| Investment in Multifamily Venture Limited Partnership   | 11,201,249           | 15,425,410           |
| Investment in Mezzanine Loan Limited Liability Company  | -                    | 947,293              |
| Acquired in place leases and tenant relationships, net of accumulated amortization of \$1,108,269 and \$888,254, respectively   | 161,810              | 388,935              |
| Deferred expenses, net of accumulated amortization of \$1,880,816 and \$1,244,326, respectively   | 3,413,587            | 3,306,807            |
| <b>Total assets</b>   | <b>\$503,245,298</b> | <b>\$480,417,430</b> |
| <b>LIABILITIES AND EQUITY (DEFICIT)</b>   |                      |                      |
| <b>Liabilities:</b>   |                      |                      |
| Mortgage notes payable  | \$474,830,728        | \$432,013,999        |
| Note payable, affiliate   | 15,720,000           | -                    |
| Due to affiliates, net  | 2,149,628            | 2,291,250            |
| Dividend and distributions payable  | 837,607              | 837,607              |
| Accrued expenses and other liabilities  | 11,086,062           | 11,724,250           |
| Tenant security deposits  | 1,838,501            | 1,800,105            |
| <b>Total liabilities</b>  | <b>506,462,526</b>   | <b>448,667,211</b>   |
| Commitments and contingencies (Note 10)   | -                    | -                    |
| <b>Equity (deficit):</b>  |                      |                      |
| Noncontrolling interest in properties   | 416,382              | 293,650              |
| Noncontrolling interest in Operating Partnership (Note 12)  | (34,251,501 )        | -                    |
| Series A 9% Cumulative Redeemable Preferred Stock, no par value, \$25 stated value, 5,000,000 shares authorized, 2,978,110 shares issued and outstanding at December 31, 2009 and December 31, 2008, respectively | 70,210,830           | 70,210,830           |
| Class A common stock, \$.01 par value, 5,000,000 shares authorized, 0 shares issued and outstanding at December 31, 2009 and December 31, 2008, respectively  | -                    | -                    |
| Class B common stock, \$.01 par value, 5,000,000 shares authorized, 1,406,196 issued and outstanding at December 31, 2009 and December 31, 2008, respectively   | 14,062               | 14,062               |
| Excess stock, \$.01 par value, 15,000,000 shares authorized, 0 shares issued and outstanding at December 31, 2009 and December 31, 2008, respectively   | -                    | -                    |
| <b>Accumulated deficit</b>  | <b>(39,607,001 )</b> | <b>(38,768,323 )</b> |

|  |               |               |
|--|---------------|---------------|
| Total equity (deficit)                 | (3,217,228 )  | 31,750,219    |
| Total liabilities and equity (deficit) | \$503,245,298 | \$480,417,430 |

The accompanying notes are an integral part of these financial statements.

BERKSHIRE INCOME REALTY, INC.  
CONSOLIDATED STATEMENTS OF INCOME (LOSS)

|   | For the years ended December 31, |               |                |
|---|----------------------------------|---------------|----------------|
|   | 2009                             | 2008          | 2007           |
| <b>Revenue:</b>   |                                  |               |                |
| Rental  | \$74,043,952                     | \$65,441,106  | \$61,097,846   |
| Interest  | 104,995                          | 605,703       | 1,112,953      |
| Utility reimbursement   | 1,675,779                        | 1,365,137     | 1,036,912      |
| Other   | 3,637,353                        | 2,725,314     | 2,568,557      |
| Total revenue   | 79,462,079                       | 70,137,260    | 65,816,268     |
| <b>Expenses:</b>  |                                  |               |                |
| Operating   | 20,453,967                       | 17,634,983    | 17,594,304     |
| Maintenance   | 4,132,269                        | 4,377,041     | 3,977,859      |
| Real estate taxes   | 8,485,196                        | 7,457,360     | 6,148,643      |
| General and administrative  | 5,688,334                        | 3,008,333     | 2,959,250      |
| Management fees   | 4,770,659                        | 4,487,677     | 4,208,626      |
| Depreciation  | 32,136,098                       | 28,277,756    | 25,838,371     |
| Interest  | 26,387,424                       | 23,370,634    | 22,032,416     |
| Loss on extinguishment of debt  | -                                | -             | 316,702        |
| Amortization of acquired in-place leases and tenant relationships   | 827,930                          | 474,258       | 1,111,431      |
| Total expenses  | 102,881,877                      | 89,088,042    | 84,187,602     |
| <b>Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations</b> |                                  |               |                |
| Equity in loss of Multifamily Venture Limited Partnership   | (23,419,798 )                    | (18,950,782 ) | (18,371,334 )  |
| Equity in income (loss) of Mezzanine Loan Limited Liability Company   | (4,224,160 )                     | (3,696,790 )  | (2,955,647 )   |
| Loss from continuing operations   | (947,294 )                       | 92,293        | -              |
|   | (28,591,252 )                    | (22,555,279 ) | (21,326,981 )  |
| <b>Discontinued operations:</b>   |                                  |               |                |
| Income (loss) from discontinued operations  | (175,072 )                       | (2,308,279 )  | (1,920,031 )   |
| Gain on disposition of real estate assets   | -                                | 79,487,487    | 32,111,239     |
| Income (loss) from discontinued operations  | (175,072 )                       | 77,179,208    | 30,191,208     |
| <b>Net income (loss)</b>  |                                  |               |                |
| Net (income) loss attributable to noncontrolling interest in properties   | (28,766,324 )                    | 54,623,929    | 8,864,227      |
| Net (income) loss attributable to noncontrolling interest in Operating Partnership (Note 12)  | 376,955                          | (5,528,481 )  | (2,031,195 )   |
| Net income (loss) attributable to Parent Company  | 34,251,501                       | (12,689,300)  | (3,904,400 )   |
| Preferred dividend  | 5,862,132                        | 36,406,148    | 2,928,632      |
| Net income (loss) available to common shareholders  | (6,700,785 )                     | (6,700,682 )  | (6,700,792 )   |
|   | \$(838,653 )                     | \$29,705,466  | \$(3,772,160 ) |
| <b>Loss from continuing operations attributable to Parent Company per common share, basic and diluted</b>   |                                  |               |                |
|   | \$(0.48 )                        | \$(33.76 )    | \$(24.15 )     |
|   | \$(0.12 )                        | \$54.89       | \$21.47        |

Income (loss) from discontinued operations attributable to Parent  
Company per common share, basic and diluted

|  |           |   |           |         |           |
|--|-----------|---|-----------|---------|-----------|
| Net loss attributable to Parent Company, per common share, basic and diluted | \$(0.60   | ) | \$21.12   | \$(2.68 | )         |
| Weighted average number of common shares outstanding, basic and diluted      | 1,406,196 |   | 1,406,196 |         | 1,406,196 |
| Dividend declared per common share   | \$0.00    |   | \$0.20    |         | \$0.07    |

The accompanying notes are an integral part of these financial statements.



BERKSHIRE INCOME REALTY, INC.  
CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY (DEFICIT)  
FOR THE YEARS ENDED DECEMBER 31, 2009, 2008 AND 2007

|   | Parent Company Shareholders  |                 |                          |                  | Accumulated<br>Deficit | Noncontrolling               |   | Total<br>Equity |
|---|------------------------------|-----------------|--------------------------|------------------|------------------------|------------------------------|---|-----------------|
|   | Series A Preferred<br>Shares | Stock<br>Amount | Class B Common<br>Shares | Common<br>Amount |                        | Interests<br>–<br>Properties | Interests –<br>Operating<br>Partnership |                 |
| Balance at<br>December<br>31, 2006            | 2,978,110                    | \$70,210,830    | 1,406,196                | \$ 14,062        | \$(64,285,878)         | \$-                          | \$-                                     | \$5,939,014     |
| Net income<br>(loss)                          | -                            | -               | -                        | -                | 2,928,632              | -                            | -                                       | 2,928,632       |
| Contributions                                 | -                            | -               | -                        | -                | (9,451 )               | -                            | -                                       | (9,451 )        |
| Distributions                                 | -                            | -               | -                        | -                | (95,600 )              | -                            | -                                       | (95,600 )       |
| Distributions<br>to preferred<br>shareholders | -                            | -               | -                        | -                | (6,700,792 )           | -                            | -                                       | (6,700,792 )    |
| Balance at<br>December<br>31, 2007            | 2,978,110                    | 70,210,830      | 1,406,196                | 14,062           | (68,163,089)           | -                            | -                                       | 2,061,803       |
| Net income<br>(loss)                          | -                            | -               | -                        | -                | 36,406,148             | 5,528,481                    | -                                       | 41,934,629      |
| Contributions                                 | -                            | -               | -                        | -                | -                      | -                            | -                                       | -               |
| Distributions                                 | -                            | -               | -                        | -                | (310,700 )             | (5,234,831)                  | -                                       | (5,545,531 )    |
| Distributions<br>to preferred<br>shareholders | -                            | -               | -                        | -                | (6,700,682 )           | -                            | -                                       | (6,700,682 )    |
| Balance at<br>December<br>31, 2008            | 2,978,110                    | 70,210,830      | 1,406,196                | 14,062           | (38,768,323)           | 293,650                      | -                                       | 31,750,219      |
| Net income<br>(loss)                          | -                            | -               | -                        | -                | 5,862,132              | (376,955 )                   | (34,251,501)                            | (28,766,324)    |
| Contributions                                 | -                            | -               | -                        | -                | -                      | 1,404,801                    | -                                       | 1,404,801       |

|   |           |              |           |          |                |            |                |                |
|---|-----------|--------------|-----------|----------|----------------|------------|----------------|----------------|
| Distributions                           | -         | -            | -         | -        | (25 )          | (905,114 ) | -              | (905,139 )     |
| Distributions to preferred shareholders | -         | -            | -         | -        | (6,700,785 )   | -          | -              | (6,700,785 )   |
| Balance at December 31, 2009            | 2,978,110 | \$70,210,830 | 1,406,196 | \$14,062 | \$(39,607,001) | \$416,382  | \$(34,251,501) | \$(3,217,228 ) |

The accompanying notes are an integral part of these financial statements.

BERKSHIRE INCOME REALTY, INC.  
CONSOLIDATED STATEMENTS OF CASH FLOWS

|  | For the years ended December 31, |              |              |
|--|----------------------------------|--------------|--------------|
|  | 2009                             | 2008         | 2007         |
| Cash flows from operating activities:  |                                  |              |              |
| Net income (loss)  | \$(28,766,324)                   | \$54,623,929 | \$8,864,227  |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities: |                                  |              |              |
| Amortization of deferred financing costs   | 693,459                          | 536,398      | 444,901      |
| Amortization of acquired in-place leases and tenant relationships                        | 827,930                          | 474,258      | 1,132,994    |
| Depreciation   | 32,136,098                       | 32,458,939   | 32,709,887   |
| Loss on extinguishment of debt   | -                                | 613,061      | 288,253      |
| Equity in loss of Multifamily Venture Limited Partnership                                | 4,224,160                        | 3,696,790    | 2,955,647    |
| Equity in (income) loss of Mezzanine Loan Limited Liability Company                      | 947,294                          | (92,293 )    | -            |
| Gain on real estate assets related to involuntary conversion                             | (90,585 )                        | (699,940 )   | (467,145 )   |
| Gain on disposition of real estates assets   | -                                | (79,487,487) | (32,111,239) |
| Increase (decrease) in cash attributable to changes in assets and liabilities:           |                                  |              |              |
| Tenant security deposits, net  | (145,912 )                       | (454,677 )   | (578,431 )   |
| Prepaid expenses and other assets  | 136,902                          | 2,516,217    | (1,060,994 ) |
| Due to/from affiliates   | (141,622 )                       | 338,703      | 572,075      |
| Accrued expenses and other liabilities   | (224,422 )                       | (2,059,095 ) | 795,472      |
| Net cash provided by operating activities  | 9,596,978                        | 12,464,803   | 13,545,647   |
| Cash flows from investing activities:  |                                  |              |              |
| Capital improvements   | (14,288,389)                     | (30,854,954) | (19,114,398) |
| Acquisition of multifamily apartment communities   | (849,719 )                       | (20,148,140) | (45,009,930) |
| Proceeds from sale of properties   | -                                | 72,281,539   | 44,697,455   |
| Interest earned on replacement reserve deposits  | (23,122 )                        | (71,400 )    | (82,333 )    |
| Restricted cash  | (12,621,014)                     | -            | -            |
| Deposits to replacement reserve escrow   | (1,605,940 )                     | (63,549 )    | (1,855,101 ) |
| Withdrawals from replacement reserve escrow  | 3,643,369                        | 3,344,208    | -            |
| Investment in Multifamily Venture Limited Partnership                                    | -                                | (2,327,750 ) | (8,890,950 ) |
| Investment in Mezzanine Loan Limited Liability Company                                   | -                                | (855,000 )   | -            |
| Distributions from investment in Multifamily Venture Limited Partnership                 | -                                | -            | 141,802      |
| Net cash (used in) provided by investing activities                                      | (25,744,815)                     | 21,304,954   | (30,113,455) |
| Cash flows from financing activities:  |                                  |              |              |
| Borrowings from mortgage notes payable   | 19,515,761                       | 13,200,000   | 73,090,000   |
| Principal payments on mortgage notes payable   | (18,902,305)                     | (12,319,867) | (29,171,254) |
| Prepayments of mortgage notes payable  | -                                | (6,433,293 ) | (6,393,374 ) |
| Borrowings from revolving credit facility – affiliate                                    | 15,720,000                       | 15,000,000   | 37,500,000   |
| Principal payments on revolving credit facility – affiliate                              | -                                | (15,000,000) | (37,500,000) |
| Good faith deposits on mortgage notes payable  | -                                | 341,250      | (341,250 )   |
| Deferred financing costs   | (255,494 )                       | (874,656 )   | (788,188 )   |
| Contribution from noncontrolling interest holders  | 1,404,801                        | -            | -            |

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|   |              |              |              |
|---|--------------|--------------|--------------|
| Distributions paid to tax authority on behalf of partners | -            | (875,000 )   | (9,451 )     |
| Distributions to noncontrolling interest in properties    | (905,114 )   | (4,359,831 ) | (2,031,195 ) |
| Distributions on common operating partnership units       | (25 )        | (14,000,000) | (4,000,000 ) |
| Distributions to preferred shareholders                   | (6,700,785 ) | (6,700,682 ) | (6,700,792 ) |
| Net cash provided by (used in) financing activities       | 9,876,839    | (32,022,079) | 23,654,496   |
| Net increase (decrease) in cash and cash equivalents      | (6,270,998 ) | 1,747,678    | 7,086,688    |
| Cash and cash equivalents at beginning of period          | 24,227,615   | 22,479,937   | 15,393,249   |
| Cash and cash equivalents at end of period                | \$17,956,617 | \$24,227,615 | \$22,479,937 |

The accompanying notes are an integral part of these financial statements.

BERKSHIRE INCOME REALTY, INC.  
CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)

|   | For the years ended December 31, |                  |                 |
|---|----------------------------------|------------------|-----------------|
|   | 2009                             | 2008             | 2007            |
| Supplemental disclosure:  |                                  |                  |                 |
| Cash paid for interest  | \$ 25,855,880                    | \$ 28,128,711    | \$ 27,962,604   |
| Capitalization of interest  | \$ 152,188                       | \$ 395,514       | \$ 107,267      |
| Supplemental disclosure of non-cash investing and financing activities:                           |                                  |                  |                 |
| Capital improvements included in accrued expenses and other liabilities                           | \$ 109,769                       | \$ 604,296       | \$ 465,491      |
| Dividends declared and payable to preferred shareholders  | \$ 837,607                       | \$ 837,607       | \$ 837,607      |
| Dividends and distributions declared and payable on common operating partnership units and shares | \$ -                             | \$ -             | \$ 1,000,000    |
| Mortgage debt assumed by buyer  | 42,203,273                       | 100,002,097      | -               |
| Write-off of real estate assets – involuntary conversion  | 278,988                          | 1,206,363        | -               |
| Insurance proceeds receivable – involuntary conversion  | 891,208                          | 1,317,693        | 529,570         |
| Acquisition of multifamily apartment communities:   |                                  |                  |                 |
| Assets purchased:   |                                  |                  |                 |
| Multifamily apartment communities   | \$ (41,602,373)                  | \$ (50,205,199)  | \$ (45,040,527) |
| Acquired in-place leases and tenant relationships   | (607,893 )                       | (662,187 )       | (615,003 )      |
| Prepaid expenses and other assets   | (1,083,422 )                     | (640,758 )       | -               |
| Deferred expenses   | -                                | -                | (346,568 )      |
| Liabilities assumed:  |                                  |                  |                 |
| Accrued expenses  | 80,760                           | 293,134          | 737,089         |
| Tenant security deposit liability   | 159,936                          | 401,496          | 255,079         |
| Mortgage assumed  | 42,203,273                       | 30,665,374       | -               |
| Net cash used for acquisition of multifamily apartment communities                                | \$ (849,719 )                    | \$ (20,148,140 ) | \$ (45,009,930) |
| Sale of real estate:  |                                  |                  |                 |

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|  |      |                |               |
|--|------|----------------|---------------|
| Gross selling price                        | \$ - | \$ 175,650,000 | \$ 45,450,000 |
| Payoff of mortgage note payable            | -    | (6,433,293 )   | -             |
| Assumption of mortgage notes payable       | -    | (92,566,152 )  | -             |
| Cost of sale                               | -    | (4,369,016 )   | (752,545 )    |
| Cash flows from sale of real estate assets | \$ - | \$ 72,281,539  | \$ 44,697,455 |

The accompanying notes are an integral part of these financial statements.

## BERKSHIRE INCOME REALTY, INC.

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

## 1. ORGANIZATION AND BASIS OF PRESENTATION

Berkshire Income Realty, Inc., (the “Company”), a Maryland corporation, was incorporated on July 19, 2002 and 100 Class B common shares were issued upon organization. The Company is in the business of acquiring, owning, operating and rehabilitating multifamily apartment communities. The Company conducts its business through Berkshire Income Realty-OP, L.P. (the “Operating Partnership”).

The Company’s consolidated financial statements include the accounts of the Company, its subsidiary, the Operating Partnership, as well as the various subsidiaries of the Operating Partnership. The Company owns preferred and general partner interests in the Operating Partnership. The remaining common limited partnership interests in the Operating Partnership, owned by KRF Company and affiliates, are reflected as Noncontrolling Interest in Operating Partnership in the financial statements of the Company.

## Properties

A summary of the multifamily apartment communities in which the Company owns an interest at December 31, 2009 is presented below:

| Description               | Location                  | Year Acquired | Total Units (Unaudited) | Ownership Interest | 2009 Occupancy (1) (Unaudited) |
|---------------------------|---------------------------|---------------|-------------------------|--------------------|--------------------------------|
| Berkshires of Columbia    | Columbia, Maryland        | 1983          | 316                     | 91.38 %            | 95.97 %                        |
| Seasons of Laurel         | Laurel, Maryland          | 1985          | 1,088                   | 100.00 %           | 96.21 %                        |
| Walden Pond/Gables        | Houston, Texas            | 1983/2003     | 556                     | 100.00 %           | 90.68 %                        |
| Laurel Woods              | Austin, Texas             | 2004          | 150                     | 100.00 %           | 93.35 %                        |
| Bear Creek                | Dallas, Texas             | 2004          | 152                     | 100.00 %           | 93.28 %                        |
| Bridgewater               | Hampton, Virginia         | 2004          | 216                     | 100.00 %           | 94.18 %                        |
| Arboretum                 | Newport News, Virginia    | 2004          | 184                     | 100.00 %           | 94.74 %                        |
| Reserves at Arboretum     | Newport News, Virginia    | 2009 (2)      | 143                     | 100.00 %           | 68.38 % (3)                    |
| Silver Hill               | Newport News, Virginia    | 2004          | 153                     | 100.00 %           | 93.18 %                        |
| Arrowhead                 | Palatine, Illinois        | 2004          | 200                     | 58.00 %            | 95.07 %                        |
| Moorings                  | Roselle, Illinois         | 2004          | 216                     | 58.00 %            | 95.62 %                        |
| Country Place I           | Burtonsville, Maryland    | 2004          | 192                     | 58.00 %            | 94.90 %                        |
| Country Place II          | Burtonsville, Maryland    | 2004          | 120                     | 58.00 %            | 94.90 %                        |
| Yorktowne                 | Millersville, Maryland    | 2004          | 216                     | 100.00 %           | 94.66 %                        |
| Berkshires on Brompton    | Houston, Texas            | 2005          | 362                     | 100.00 %           | 96.63 %                        |
| Riverbirch                | Charlotte, North Carolina | 2005          | 210                     | 100.00 %           | 92.57 %                        |
| Lakeridge                 | Hampton, Virginia         | 2005          | 282                     | 100.00 %           | 94.10 %                        |
| Berkshires at Citrus Park | Tampa, Florida            | 2005          | 264                     | 100.00 %           | 92.75 %                        |
| Briarwood Village         | Houston, Texas            | 2006          | 342                     | 100.00 %           | 96.09 %                        |
| Chisholm Place            | Dallas, Texas             | 2006          | 142                     | 100.00 %           | 96.55 %                        |
| Standard at Lenox Park    | Atlanta, Georgia          | 2006          | 375                     | 100.00 %           | 93.65 %                        |
| Berkshires at Town Center | Towson, Maryland          | 2007          | 196                     | 100.00 %           | 86.55 %                        |

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|                 |                            |      |       |        |   |       |   |
|-----------------|----------------------------|------|-------|--------|---|-------|---|
| Sunfield Lakes  | Sherwood, Oregon           | 2007 | 200   | 100.00 | % | 94.03 | % |
| Executive House | Philadelphia, Pennsylvania | 2008 | 302   | 100.00 | % | 94.64 | % |
| GLO             | Los Angeles, California    | 2009 | 201   | 89.955 | % | 90.92 | % |
|                 |                            |      | 6,778 |        |   |       |   |

All of the properties in the above table are encumbered by mortgages as of December 31, 2009 with the exception of the Berkshires at Citrus Park property.

- (1) Represents the average year-to-date physical occupancy.
- (2) Property was acquired as raw land in 2004. Development of the multifamily apartment community on the land was completed and fully leased during the year ended December 31, 2009.
- (3) The average occupancy for The Reserves at Arboretum Place property reflects the lease up of the property after completion of construction in early 2009. The physical occupancy was 96.15% as of December 31, 2009.

Discussion of dispositions for the years ended December 31, 2009, 2008 and 2007

On May 30, 2007, the Operating Partnership completed the sale of 100% of its interest in Trellis at Lee's Mill ("Trellis") in Newport News, Virginia. The proceeds from the sale of Trellis in the amount of \$5,324,664 were deposited in an escrow account with a qualified institution pursuant to a transaction structured to comply with a 1031 Exchange under the Tax Code. The Company reinvested its share of proceeds from the sale of Trellis by purchasing qualified replacement property. The operating results of Trellis have been presented in the consolidated statement of operations as discontinued operations in accordance with ASC 360-10.

On June 22, 2007, the Operating Partnership completed the sale of 100% of its interest in Dorsey's Forge ("Dorsey's") in Columbia, Maryland. The Company's share of the proceeds from the sale of Dorsey's in the amount of \$13,137,316 were deposited in an escrow account with a qualified institution pursuant to a transaction structured to comply with a 1031 Exchange under the Tax Code. The Company reinvested its share of the proceeds from the sale of Dorsey's by purchasing qualified replacement property. The operating results of Dorsey's have been presented in the consolidated statement of operations as discontinued operations in accordance with ASC 360-10.

On April 28, 2008, the Operating Partnership completed the sale of 100% of its interest in St. Marin/Karrington Apartments ("St. Marin") in Coppell, Texas. The selling price was \$61,750,000 and subject to normal closing costs and operating prorations. The Company retained the balance of the sale proceeds in its operating account for its operating use. The operating results of St. Marin have been presented in the consolidated statement of operations as discontinued operations in accordance with ASC 360-10.

On May 29, 2008, the Operating Partnership completed the sale of 100% of its interest in Berkshires at Westchase Apartments ("Westchase") in Houston, Texas. The selling price was \$12,400,000 and subject to normal closing costs and operating prorations. The proceeds from the sale of Westchase were deposited in the Company's operating account for its operating use. The operating results of Westchase have been presented in the consolidated statement of operations as discontinued operations in accordance with ASC 360-10.

On October 29, 2008, the Operating Partnership completed the sale of 100% of its interest in Century Apartments ("Century") in Cockeysville, Maryland. The selling price was \$52,000,000 and subject to normal closing costs and operating prorations. The Company's portion of the net proceeds from the sale of Century was deposited in the Company's operating account for its operating use. The operating results of Century have been presented in the consolidated statement of operations as discontinued operations in accordance with ASC 360-10.

On December 30, 2008, the Operating Partnership completed the sale of 100% of its interest in Westchester West Apartments ("Westchester West") in Silver Spring, Maryland. The selling price was \$49,500,000 and subject to normal



closing costs and operating prorations. The proceeds from the sale of Westchester West were deposited in an escrow account with a qualified institution pursuant to a transaction structured to comply with a 1031 Exchange under the Tax Code. Subsequently, the proceeds were distributed from the qualified intermediary and deposited in the Company's operating account for its operating use. The operating results of Westchester West have been presented in the consolidated statement of operations as discontinued operations in accordance with ASC 360-10.

There were no dispositions during the year ended December 31, 2009.

## 2. SIGNIFICANT ACCOUNTING POLICIES

### Principles of combination and consolidation

The accompanying consolidated financial statements include the accounts of the Company, its wholly-owned subsidiaries and entities which it controls including those entities subject to ASC 810-10. Variable interest entities (“VIEs”) are entities in which the equity investors do not have a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support. In accordance with ASC 810-10, the Company consolidates VIEs for which it has a variable interest (or a combination of variable interests) that will absorb a majority of the entity’s expected losses, receive a majority of the entity’s expected residual returns, or both, based on an assessment performed at the time the Company becomes involved with the entity. The Company reconsiders this assessment only if the entity’s governing documents or the contractual arrangements among the parties involved change in a manner that changes the characteristics or adequacy of the entity’s equity investment at risk, some or all of the equity investment is returned to the investors and other parties become exposed to expected losses of the entity, the entity undertakes additional activities or acquires additional assets beyond those that were anticipated at inception or at the last reconsideration date that increase its expected losses, or the entity receives an additional equity investment that is at risk, or curtails or modifies its activities in a way that decreases its expected losses.

For entities not deemed to be VIEs, the Company consolidates those entities in which it owns a majority of the voting securities or interests, except in those instances in which the noncontrolling voting interest owner effectively participates through substantive participative rights, as discussed in ASC 810-10 and ASC 970-323. Substantive participatory rights include the ability to select, terminate, and set compensation of the investee’s management, the ability to participate in capital and operating decisions of the investee (including budgets), in the ordinary course of business.

The Company also evaluates its ownership interests in entities not deemed to be VIEs, including partnerships and limited liability companies, to determine if its economic interests result in the Company controlling the entity as promulgated in ASC 810-20.

### Real estate

Real estate assets are recorded at depreciated cost. The cost of acquisition (exclusive of transaction costs), development and rehabilitation and improvement of properties are capitalized. Interest costs are capitalized on development projects until construction is substantially complete. There was \$152,188, \$395,613 and \$107,267 of interest capitalized in 2009, 2008 and 2007, respectively. Recurring capital improvements typically include appliances, carpeting, flooring, HVAC equipment, kitchen and bath cabinets, site improvements and various exterior building improvements. Non-recurring upgrades include kitchen and bath upgrades, new roofs, window replacements and the development of on-site fitness, business and community centers.

The Company accounts for its acquisitions of investments in real estate in accordance with ASC 805-10-, which requires the fair value of the real estate acquired to be allocated to the acquired tangible assets, consisting of land, building, furniture, fixtures and equipment and identified intangible assets and liabilities, consisting of the value of the above-market and below-market leases, the value of in-place leases and value of other tenant relationships, based in each case on their fair values. The Company considers acquisitions of operating real estate assets to be businesses as that term is contemplated in 810-10.

The Company allocates purchase price to the fair value of the tangible assets of an acquired property (which includes land, building, furniture, fixtures and equipment) determined by valuing the property as if it were vacant. The as-if-vacant value is allocated to land and buildings, furniture, fixtures and equipment based on management's determination of the relative fair values of these assets.

Above-market and below market in-place lease values for acquired properties are recorded based on the present value (using an interest rate which reflects the risks associated with the leases acquired) of the difference between (i) the contractual amounts to be paid pursuant to the in-place leases and (ii) management's estimate of fair market lease rates for the corresponding in-place leases, measured over a period equal to the remaining non-cancelable term of the lease. The capitalized above-market lease values are amortized as a reduction of rental income over the remaining non-cancelable terms of the respective leases. The capitalized below-market lease values are amortized as an increase to rental income over the initial term and any fixed-rate renewal periods in the respective leases.

Management may engage independent third-party appraisers to perform these valuations and those appraisals may use commonly employed valuation techniques, such as discounted cash flow analyses. Factors considered in these analyses include an estimate of carrying costs during hypothetical expected lease-up periods considering current market conditions, and costs to execute similar leases. The Company also considers information obtained about each property as a result of its pre-acquisition due diligence, marketing and leasing activities in estimating the fair value of the tangible and intangible assets acquired. In estimating carrying costs, management also includes real estate taxes, insurance and other operating expenses and estimates of lost rentals at market rates during the expected lease-up periods depending on specific local market conditions and depending on the type of property acquired.

The total amount of other intangible assets acquired is further allocated to in-place leases, which includes other tenant relationship intangible values based on management's evaluation of the specific characteristics of the residential leases and the Company's tenant retention history.

The value of in-place leases and tenant relationships are amortized over the specific expiration dates of the in-place leases over a period of 12 months and the tenant relationships are based on the straight line method of amortization over a 24 month period. The following condensed table provides the amounts assigned to each major balance sheet asset caption for the 2009 acquisitions as of the acquisition date:

|                      |              |           |               | Total        |
|----------------------|--------------|-----------|---------------|--------------|
|                      | Multifamily  | Acquired  |               | booked at    |
| Property Communities | Apartment    | In-Place  | Tenant        | acquisition  |
|                      |              | Leases    | Relationships | date         |
| Glo                  | \$41,602,373 | \$500,940 | \$106,953     | \$42,210,266 |

The purchase of Glo was subject to the assumption of the existing mortgage debt on the property at the time of closing. The Company, through its joint venture, BIR Holland JV LLC, in connection with the acquisition, assumed mortgage notes payable with outstanding balances of \$47,500,000, which is collateralized by the related property. The note has a variable interest rate. As of December 31, 2009, the interest rate is 1.52%. In accordance with ASC 805-10, the Company recorded this mortgage at fair value, which was determined by calculating the present value of the future payments at current interest rates. The fair market value at the acquisition date for the debt assumed on Glo Apartments was \$42,203,273. The mortgage note originally required two principal reductions during 2009 and 2010 in the amount of \$9,500,000 and \$2,710,000, respectively. On July 27, 2009, Fannie Mae granted a six-month extension for the amount originally due in 2009 of \$9,500,000 to March 15, 2010. These principal reduction payments due in 2010 are backed by cash secured irrevocable letters of credit of corresponding amounts. The cash is reflected as restricted cash on the balance sheet as of December 31, 2009.



Expenditures for ordinary maintenance and repairs are charged to operations as incurred. Depreciation is computed on the straight-line basis over the estimated useful lives of the assets, as follows:

|                          |                  |
|--------------------------|------------------|
| Rental property          | 25 to 27.5 years |
| Improvements             | 5 to 20 years    |
| Appliances and equipment | 3 to 8 years     |

When a property is sold, its costs and related depreciation are removed from the accounts with the resulting gains or losses reflected in net income or loss for the period.

Pursuant to ASC 360-10, management reviews its long-lived assets used in operations for impairment when there is an event or change in circumstances that indicates impairment in value. An asset is considered impaired when the undiscounted future cash flows are not sufficient to recover the asset's carrying value. If such impairment is present, an impairment loss is recognized based on the excess of the carrying amount of the asset over its fair value. The evaluation of anticipated cash flows is highly subjective and is based in part on assumptions regarding future rental occupancy, rental rates and capital requirements that could differ materially from actual results in future periods. No such impairment losses have been recognized to date.

Our investments in unconsolidated joint ventures are reviewed for impairment periodically and we record impairment charges when events or circumstances change indicating that a decline in the fair values below the carrying values has occurred and such decline is other-than-temporary. The ultimate realization of our investment in unconsolidated joint ventures is dependent on a number of factors, including the performance of each investment and market conditions. We will record an impairment charge if we determine that a decline in the value of an investment in an unconsolidated joint venture is other than temporary. Please refer to Note 4 – Investment in Mezzanine Loan Limited liability Company for further discussion of impairments recorded.

#### Cash and cash equivalents

The Company participates in centralized cash management whereby cash receipts are deposited in specific property operating accounts and are transferred to the Company's central operating account. Bills are paid from a central disbursement account maintained by an affiliate of the Company, which is reimbursed from the Company's central operating accounts. In management's opinion, the cash and cash equivalents presented in the consolidated financial statements are available and required for normal operations.

The Company invests its cash primarily in deposits and money market funds with commercial banks. All short-term investments with maturities of three months or less from the date of acquisition are included in cash and cash equivalents. The cash investments are recorded at cost, which approximates current market values.

#### Concentration of credit risk

The Company maintains cash deposits with major financial institutions, which from time to time may exceed federally insured limits. The Company does not believe that this concentration of credit risk represents a material risk of loss with respect to its financial position as the Company invests with creditworthy institutions including national banks and major financial institutions.

## Investments

The Company accounts for its investments in accordance with ASC 320-10. At the time of purchase, fixed maturity securities are classified based on intent, as held-to-maturity, trading, or available-for-sale. In order for the security to be classified as held-to-maturity, the Company must have positive intent and ability to hold the securities to maturity. Securities held-to-maturity are stated at cost adjusted for amortization of premiums and accretion of discounts. Securities that are bought and held principally for the purpose of selling them in the near term are classified as trading. Securities that do not meet this criterion are classified as available-for-sale. Available-for-sale securities are carried at aggregate fair value with changes in unrealized gains or losses reported as a component of comprehensive income. Fair values for publicly traded securities are obtained from external market quotations. All security transactions are recorded on a trade date basis.

The Company's accounting policy for impairment requires recognition of an other-than-temporary impairment write-down on a security if it is determined that the Company is unable to recover all amounts due under the contractual obligations of the security. In addition, for securities expected to be sold, an other-than-temporary impairment charge is recognized if the Company does not expect the fair value of a security to recover to cost or amortized cost prior to the expected date of sale. Once an impairment charge has been recorded, the Company then continues to review the other-than-temporarily impaired securities for additional impairment, if necessary. Please refer to Note 4 – Investment in Mezzanine Loan Limited liability Company for further discussion of impairments recorded.

### Cash restricted for tenant security deposits

Cash restricted for tenant security deposits represents security deposits held by the Company under the terms of certain tenant lease agreements.

### Cash restricted, other

Cash restricted, other represents funds segregated in accordance with the provisions of the financing agreements for the Glo property which was acquired in 2009.

### Replacement reserve escrows

Certain lenders require escrow accounts for capital improvements. The escrows are funded from operating cash, as needed.

### Deferred expenses

Fees and costs incurred to obtain long-term financing have been deferred and are being amortized over the terms of the related loans, on a method which approximates the effective interest method.

### Noncontrolling Interest in Properties

Unaffiliated third parties have ownership interests in six of the Company's multifamily apartment communities at December 31, 2009. Such interests are accounted for as "Noncontrolling Interest in Properties" in the accompanying financial statements. Allocations of earnings and distributions are made to noncontrolling holders based upon their respective share allocations. Accordingly, for financial reporting purposes in prior years, allocations of earnings and distributions in excess of noncontrolling holders' investment basis were allocated to the Company. As of January 1, 2009, in accordance with ASC 810-10, the noncontrolling holders interest in the properties have been reduced for their share of the current year allocation of earnings and distributions deficit and are reflected as negative amounts on the

balance sheet. See ASC 810-10 for additional information.

#### Noncontrolling Interest in Operating Partnership

In accordance with ASC 974-810, KRF Company and affiliates' common limited partnership interest in the Operating Partnership is being reflected as "Noncontrolling Interest in Operating Partnership" in the financial statements of the Company.

The net equity to the common and general partner interests in the Operating Partnership is less than zero after an allocation to the Company and affiliates' preferred interest in the Operating Partnership. Further, KRF Company and affiliates have no obligation to fund such deficit. Accordingly, for financial reporting purposes in prior years, KRF Company and affiliates' noncontrolling interest in the Operating Partnership had been reflected as zero with common stockholders' equity being reduced for the deficit amount. As of January 1, 2009, in accordance with ASC 810-10, KRF Company and affiliates' noncontrolling interest in the Operating Partnership have been reduced for their share of the current year deficit and are reflected as negative amounts on the balance sheet. See ASC 810-10 for additional information.

In accordance with ASC 974-810, earnings of the Operating Partnership are first being allocated to the preferred interests held by the Company. The remainder of earnings, if any, are allocated to the Company's general partner and KRF Company and affiliates' common limited partnership interests in accordance with their relative ownership percentages. The excess of the allocation of income to KRF Company and affiliates over cash distributed to them will be credited directly to the Company's equity (with a corresponding debit to noncontrolling interest) until the noncontrolling interest deficit that existed upon the completion of the Offering is eliminated. Distributions to the noncontrolling holders in excess of their investment basis are recorded in the Company's statement of operations as Noncontrolling Interest in Operating Partnership.

#### Stockholders' equity/ deficit

Capital contributions, distributions and profits and losses are allocated in accordance with the terms of the individual partnership and or limited liability company agreements. Distributions and dividends are accrued and recorded in the period declared.

#### Equity offering costs

Underwriting commissions and offering costs have been reflected as a reduction of proceeds from issuance of the Preferred Shares.

#### Debt extinguishment costs

In accordance with ASC 470-50, the Company has determined that debt extinguishment costs do not meet the criteria for classification as extraordinary pursuant to ASC 225-20. Accordingly, costs associated with the early extinguishment of debt are included in the caption "loss on extinguishment of debt" and/or "discontinued operations" in the Statements of Operations for the years ended December 31, 2009, 2008 and 2007.

#### Rental revenue

The properties are leased with terms of generally one year or less. Rental revenue is recognized on a straight-line basis over the related lease term. As a result, deferred rents receivable are created when rental revenue is recognized during the concession period of certain negotiated leases and amortized over the remaining term of the lease. Recoveries from tenants for utility expenses are recognized in the period the applicable costs are incurred.



#### Other income

Other income, which consists primarily of income from damages, laundry, cable, phone, pool, month to month tenants, relet fees and pet fees, is recognized when earned.

#### Income taxes

The Company elected to be treated as a real estate investment trust (“REIT”) under Section 856 of the Tax Code (the “Code”), with the filing of its first tax return. As a result, the Company generally is not subject to federal corporate income tax on its taxable income that is distributed to its stockholders.

A REIT is subject to a number of organizational and operational requirements, including a requirement that it currently distribute at least 90% of its annual taxable income. The Company’s policy is to make sufficient distributions of its taxable income to meet the REIT distribution requirements.

The Company must also meet other operational requirements with respect to its investments, assets and income. The Company monitors these various requirements on a quarterly basis and believes that as of and for the years ended December 31, 2009 and 2008, it was in compliance on all such requirements. Accordingly, the Company has made no provision for federal income taxes in the accompanying consolidated financial statements. Also as of January 1, 2007, the Company became subject to the revised franchise tax calculation in Texas.

The net difference between the tax basis and the reported amounts of the Company’s assets and liabilities is approximately \$76,366,295 and \$61,384,770 as of December 31, 2009 and 2008, respectively. The Company believes that due to its structure and the terms of the partnership agreement of the Operating Partnership, if the net difference is realized under the Code, any impact would be substantially realized by the common partners of the Operating Partnership and the impact on the common and preferred shareholders would be negligible.

The Company monitors the impact of ASC 740-10, which clarifies the accounting for uncertainty in income taxes recognized in the Company’s financial statements in accordance with ASC 740-10. As of December 31, 2009 and 2008, the Company has determined it does not have a liability related to a tax position taken or expected to be taken in a tax return and therefore has not recorded any adjustments to its financial statements.

## Recent Accounting Pronouncements

In July 2009, the Financial Accounting Standards Board (“FASB”) issued the FASB Accounting Standard Codification (“ASC”) 105-10 (“ASC 105-10” or the “Codification”), which reorganizes the accounting principles generally accepted in the United States of America (“GAAP”) hierarchy. ASC 105-10 is intended to improve financial reporting by providing a consistent framework for determining what accounting principles should be used in preparing GAAP financial statements. Other than resolving certain minor inconsistencies in current GAAP, the Codification is not supposed to change GAAP, but is intended to make it easier to find and research GAAP applicable to a particular transaction or specific accounting issue. The Codification is a new structure which takes accounting pronouncements and organizes them by approximately 90 accounting topics. ASC 105-10 is effective for interim periods ending after September 15, 2009. The Company’s adoption of ASC 105-10 did not have any impact on its financial position and results of operations.

In December 2007, the FASB issued ASC 805-10, which is intended to improve reporting by creating greater consistency in the accounting and financial reporting of business combinations. ASC 805-10 establishes principles and requirements for how the acquiring entity shall recognize and measure in its financial statements the identifiable assets acquired, liabilities assumed, any noncontrolling interest in the acquired entity and goodwill acquired in a business combination. This guidance is effective for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. The Company adopted ASC 805-10 as of January 1, 2009, which resulted in a \$1,183,299 charge to operations for transaction costs associated with the acquisition of Glo Apartments.

In May 2008, the FASB issued ASC 815-10, which amends and expands the disclosure requirements of ASC 815-10 with the intent to provide users of financial statements with an enhanced understanding of: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under ASC 815-10 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity’s financial position, financial performance, and cash flows. ASC 815-10 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about the fair value of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative instruments. ASC 815-10, as amended and interpreted, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. The Company has assessed the impact of ASC 815-10 and determined that the adoption of ASC 815-10 did not have a material impact on the financial position or operating results of the Company.

Effective January 1, 2009, the Company adopted ASC 810-10, which establishes and expands accounting and reporting standards for noncontrolling interests (which are recharacterized as noncontrolling interests) in a subsidiary and the deconsolidation of a subsidiary. As a result of the Company’s adoption of this standard, amounts previously reported as noncontrolling interests in properties and noncontrolling interests in the Operating Partnership on our balance sheets are now presented as noncontrolling interests in properties and noncontrolling interests in Operating Partnership within equity. There has been no change in the measurement of this line item from amounts previously reported.

Also effective with the adoption of ASC 810-10, previously reported noncontrolling interests have been recharacterized on the accompanying statement of operations to noncontrolling interests and placed below net loss before arriving at net loss attributable to Parent Company. In accordance with the guidance of ASC 810-10, the Company allocated losses to the noncontrolling interest in Operating Partnership of \$34,251,501, which represents their share of losses. Historically, these losses were allocated to the common shareholders.

In April 2009, the FASB issued ASC 820-10, which provides additional guidance for estimating fair value in accordance with ASC 820-10, when the volume and level of activity for the asset or liability have significantly

decreased and for identifying transactions that are not orderly. ASC 820-10 is effective for interim and annual reporting periods ending after June 15, 2009. The Company elected early adoption of ASC 820-10 as of January 1, 2009. The Company has assessed the impact of ASC 820-10 and has determined that the adoption of ASC 820-10 did not have a material impact on the financial position or operating results of the Company.

In April 2009, the FASB issued ASC 825-10 which requires disclosures about fair value of financial instruments for interim reporting periods of publicly traded companies as well as in annual financial statements. Effective January 1, 2009, the Company adopted ASC 825-10, which did not have a material impact on the financial position or operating results of the Company.

In April 2009, the FASB issued ASC 855-10 which provides authoritative guidance for subsequent events. This guidance is intended to establish general standards of accounting for and disclosures of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. Effective April 1, 2009, the Company adopted ASC 855-10, which did not have any impact on its financial position and results of operations.

#### Consolidated Statements of Comprehensive Income (Loss)

For the years ended December 31, 2009, 2008 and 2007, comprehensive income (loss) equaled net income (loss). Therefore, the Consolidated Statement of Comprehensive Income and Loss required to be presented has been omitted from the consolidated financial statements.

#### Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, contingent assets and liabilities at the date of financial statements and revenue and expenses during the reporting period. Such estimates include the amortization of acquired in-place leases and tenant relationships, the allowance for depreciation and the fair value of the accrued participating note interest. Actual results could differ from those estimates.

#### Reclassifications

Certain prior period balances have been reclassified in order to conform to the current period presentation.

## 3. MULTIFAMILY APARTMENT COMMUNITIES

The following summarizes the carrying value of the Company's multifamily apartment communities:

|   | December 31,          |                       |
|---|-----------------------|-----------------------|
|   | 2009                  | 2008                  |
| Land  | \$ 67,711,675         | \$ 56,100,766         |
| Buildings, improvements and personal property | 542,991,023           | 499,580,270           |
| Multifamily apartment communities             | 610,702,698           | 555,681,036           |
| Accumulated depreciation                      | (168,718,977)         | (136,678,464)         |
| <b>Multifamily apartment communities, net</b> | <b>\$ 441,983,721</b> | <b>\$ 419,002,572</b> |

The Company accounts for its acquisitions of investments in real estate in accordance with ASC 805-10, which requires the fair value of the real estate acquired to be allocated to the acquired tangible assets, consisting of land, building, furniture, fixtures and equipment and identified intangible assets and liabilities, consisting of the value of the above-market and below-market leases, the value of in-place leases and the value of other tenant relationships, based in each case on their fair values. The value of in-place leases and tenant relationships are amortized over the specific expiration dates of the in-place leases over a period of 12 months and the tenant relationships are based on the straight-line method of amortization over a 24-month period.

The Company evaluated the carrying value of its multifamily apartment communities for impairment pursuant to ASC 360-10. The Company did not record an impairment adjustment at December 31, 2009 or 2008.

#### Discontinued Operations

On May 30, 2007, the Operating Partnership completed the sale of 100% of its interest in Trellis at Lee's Mill ("Trellis") in Newport News, Virginia. The proceeds from the sale of Trellis in the amount of \$5,324,664 were deposited in an escrow account with a qualified institution pursuant to a transaction structured to comply with a 1031 Exchange under the Tax Code. The Company reinvested its share of proceeds from the sale of Trellis by purchasing qualified replacement property. The operating results of Trellis have been presented in the consolidated statement of operations as discontinued operations pursuant to ASC 360-10.

On June 22, 2007, the Operating Partnership completed the sale of 100% of its interest in Dorsey's Forge ("Dorsey's") in Columbia, Maryland. The Company's share of the proceeds from the sale of Dorsey's in the amount of \$13,137,316 were deposited in an escrow account with a qualified institution pursuant to a transaction structured to comply with a 1031 Exchange under the Tax Code. The Company reinvested its share of the proceeds from the sale of Dorsey's by purchasing qualified replacement property. The operating results of Dorsey's have been presented in the consolidated statement of operations as discontinued operations pursuant to ASC 360-10.

On April 28, 2008, the Operating Partnership completed the sale of 100% of its interest in St. Marin/Karrington Apartments ("St. Marin") in Coppell, Texas. The selling price was \$61,750,000 and subject to normal closing costs and

operating prorrations. The Company retained the balance of the sale proceeds in its operating account for its operating use. The operating results of St. Marin have been presented in the consolidated statement of operations as discontinued operations pursuant to ASC 360-10.

On May 29, 2008, the Operating Partnership completed the sale of 100% of its interest in Berkshires at Westchase Apartments (“Westchase”) in Houston, Texas. The selling price was \$12,400,000 and subject to normal closing costs and operating prorrations. The proceeds from the sale of Westchase were deposited in the Company’s operating account for its operating use. The operating results of Westchase have been presented in the consolidated statement of operations as discontinued operations pursuant to ASC 360-10.

On October 29, 2008, the Operating Partnership completed the sale of 100% of its interest in Century Apartments (“Century”) in Cockeysville, Maryland. The selling price was \$52,000,000 and subject to normal closing costs and operating prorrations. The Company’s portion of the net proceeds from the sale of Century was deposited in the Company’s operating account for its operating use. The operating results of Century have been presented in the consolidated statement of operations as discontinued operations pursuant to ASC 360-10.

On December 30, 2008, the Operating Partnership completed the sale of 100% of its interest in Westchester West Apartments (“Westchester West”) in Silver Spring, Maryland. The selling price was \$49,500,000 and subject to normal closing costs and operating prorrations. The proceeds from the sale of Westchester West were deposited in an escrow account with a qualified institution pursuant to a transaction structured to comply with a 1031 Exchange under the Tax Code. Subsequently, the proceeds were distributed from the qualified intermediary and deposited in the Company’s operating account for its operating use. The operating results of Westchester West have been presented in the consolidated statement of operations as discontinued operations pursuant to ASC 360-10.

The operating results of discontinued operations for the years ended December 31, 2009, 2008 and 2007 are summarized as follows:

|   | 2009        | 2008          | 2007          |
|---|-------------|---------------|---------------|
| Revenue:  |             |               |               |
| Rental  | \$469       | \$12,171,539  | \$20,127,808  |
| Interest  | -           | 5,511         | 8,543         |
| Utility reimbursement   | -           | 373,906       | 440,420       |
| Other   | 10,398      | 499,956       | 917,722       |
| Total revenue   | 10,867      | 13,050,912    | 21,494,493    |
| Expenses:   |             |               |               |
| Operating   | 80,016      | 2,672,508     | 4,658,228     |
| Maintenance   | 42,209      | 1,079,529     | 1,536,971     |
| Real estate taxes   | -           | 1,303,033     | 2,441,803     |
| General and administrative  | 63,710      | 357,622       | 381,530       |
| Management fees   | 4           | 521,445       | 839,807       |
| Depreciation  | -           | 4,181,183     | 6,871,514     |
| Interest  | -           | 3,986,525     | 6,096,816     |
| Loss on extinguishment of debt                                    | -           | 1,257,346     | 566,291       |
| Amortization of acquired in-place leases and tenant relationships | -           | -             | 21,564        |
| Total expenses  | 185,939     | 15,359,191    | 23,414,524    |
| Loss from discontinued operations                                 | \$(175,072) | \$(2,308,279) | \$(1,920,031) |

#### 4. INVESTMENT IN MEZZANINE LOAN LIMITED LIABILITY COMPANY

On June 19, 2008, the Company through its wholly owned subsidiary BIR Blackrock, L.L.C., entered into a subscription agreement to invest in the Leggat McCall Hingham Mezzanine Loan LLC, a Massachusetts limited liability company (the "Mezzanine Loan LLC"). Under the terms of the agreement, the Company agreed to invest up to

\$1,425,000, or approximately 41%, of the total capital of the investment in order to subscribe for 14.25 units of the Mezzanine Loan LLC. The Company has funded \$855,000, or 60%, of its commitment as of December 31, 2009.

The Company has evaluated its investment in the Mezzanine Loan LLC and concluded that the investment, although subject to the requirements of ASC 810-10, will not require the Company to consolidate the activity of the Mezzanine Loan LLC as the Company has determined that it is not the primary beneficiary of the venture as defined in ASC 810-10. The Company accounted for its investment in the Mezzanine Loan LLC under the equity method of accounting in accordance with the provisions of ASC 325-20.

During the year ended December 31, 2009, the developer of the property securing the Mezzanine Loan LLC's investment suffered financial problems related to other projects it is working on. As a result of these issues, the managing member of the Mezzanine Loan LLC (the "Managing Member") negotiated with another developer to take over the project. The Managing Member also attempted to extend the maturity date of the underlying first mortgage on the real estate in conjunction with the hiring of the new developer. Neither of the strategies of the Managing Member were successful and as a result the lender required the replacement of the Managing Member. Due to the ongoing uncertainty of the investment and changes in the structure of the investment resulting from the actions of the lender, the Company decided to distribute its interest in the investment to the common interest holder of the Operating Partnership.

During the year ended December 31, 2009 and prior to the Company deciding to distribute its interest in the investment to the common interest holder of the Operating Partnership, the Company recognized income related to its investment in the Mezzanine Loan LLC. The income represents interest accrued on the Company's investment and totaled \$170,531. The income increased the Company's carrying value of the investment prior to the write-down. Additionally, the Company recognized impairment charges which represented the other-than-temporary decline in the fair value below the carrying value of the Company's investment in the Mezzanine Loan LLC. In accordance with ASC 325-20, a loss in value of an investment under the equity method of accounting, which is other than a temporary decline, must be recognized. Unlike ASC 360-10, potential impairments under ASC 325-20 result from fair values derived based on discounted cash flows and other valuation techniques which are more sensitive to current market conditions. As a result, the Company recognized non-cash impairment charges of \$1,117,825 on its investment in the Mezzanine Loan LLC in 2009.

On December 30, 2009, as part of a special distribution to the common stockholders, the Company distributed its interest in the Mezzanine Loan LLC. The interests were valued at \$1,000 at the time of distribution. Prior to the distribution, the Company had been required to recognize impairment charges on the investment which represented other-than-temporary declines in the fair value of the investment below the carrying value. The carrying value of the investment prior to distribution was \$0.

## 5. INVESTMENT IN MULTIFAMILY LIMITED PARTNERSHIP VENTURE

On August 12, 2005, the Company, together with affiliates and other unaffiliated parties, entered into a subscription agreement to invest in the Berkshire Multifamily Value Fund, L.P. (“BVF”), an affiliate of Berkshire Property Advisors, L.L.C. (“Berkshire Advisor” or the “Advisor”). Under the terms of the agreement and the related limited partnership agreement, the Company and its affiliates agreed to invest up to \$25,000,000, or approximately 7%, of the total capital of the partnership. The Company’s final commitment under the subscription agreement with BVF totals \$23,400,000. BVF’s investment strategy is to acquire middle-market properties where there is an opportunity to add value through repositioning or rehabilitation. The investment restrictions contained in the BVF partnership agreement no longer apply to the Company as the period expired in conjunction with BVF reaching full investment in 2008.

The managing partner of BVF is an affiliate of the Company. The Company has evaluated its investment in BVF and concluded that the investment, although subject to the requirements of ASC 810-10, will not require the Company to consolidate the activity of BVF as the Company has determined that it is not the primary beneficiary of the venture as defined in ASC 810-10.

In relation to its investment in BVF, the Company has elected to adopt a three-month lag period in which it recognizes its share of the equity earnings of BVF in arrears. The lag period is allowed under the provisions of ASC 810-10 and is necessary in order for the Company to consistently meet its regulatory filing deadlines. As of December 31, 2009 and 2008, the Company has accounted for its share of the equity in BVF operating activity through September 30, 2009 and 2008, respectively.

On September 12, 2008, the Company received notice of the tenth capital call by BVF. The capital call represented 3.0%, or \$700,075, of the total \$23,400,000 capital committed to BVF by the Company. The contribution was paid to BVF on September 26, 2008 and brought the total direct investment by the Company in BVF to \$21,772,326, or 93.0% of the total committed capital amount of \$23,400,000.

On December 5, 2008, the Company received notice of the final capital call by BVF. The capital call represented 7.0%, or \$1,627,674, of the total \$23,400,000 capital committed to BVF by the Company. The contribution was paid to BVF on December 19, 2008 and brought the total direct investment by the Company in BVF to 100.0% of the total committed capital amount of \$23,400,000.

The summarized statement of assets, liabilities and partners’ capital of BVF is as follows:

|  | September 30,<br>2009<br>(unaudited) | September 30,<br>2008<br>(unaudited) |
|--|--------------------------------------|--------------------------------------|
| <b>ASSETS</b>                            |                                      |                                      |
| Multifamily apartment communities, net   | \$1,160,175,575                      | \$1,209,859,485                      |
| Cash and cash equivalents                | 20,578,331                           | 10,135,705                           |
| Other assets                             | 27,894,742                           | 28,524,544                           |
| Total assets                             | \$1,208,648,648                      | \$1,248,519,734                      |
| <b>LIABILITIES AND PARTNERS’ CAPITAL</b> |                                      |                                      |
| Mortgage notes payable                   | \$972,346,565                        | \$939,696,802                        |
| Revolving credit facility                | 38,400,000                           | 61,900,000                           |
| Other liabilities                        | 20,214,964                           | 24,103,571                           |
| Noncontrolling interest                  | 26,319,634                           | 34,363,160                           |



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|   |                 |                 |
|---|-----------------|-----------------|
| Partners' capital   | 151,367,485     | 188,456,201     |
| Total liabilities and partners' capital   | \$1,208,648,648 | \$1,248,519,734 |
| Company's share of partners' capital  | \$10,596,854    | \$13,193,341    |
| Basis differential (1)  | 604,395         | 2,232,069       |
| Carrying value of the Company's investment in Multifamily Venture Limited Partnership | \$11,201,249    | \$15,425,410    |

(1) This amount represents the difference between the Company's investment in BVF and its share of the underlying equity in the net assets of BVF (adjusted to conform with GAAP) including the timing of the lag period, as described above. At December 31, 2009 and December 31, 2008, the differential related mainly to the contribution of capital made by the Operating Partnership, in the amount of \$0 and \$1,627,674, to BVF during the fourth quarter of 2009 and 2008, respectively. Additionally, \$583,240 represents the Company's share of syndication costs incurred by BVF of which the Company was not required to fund via a separate capital call.

The Company evaluates the carrying value of its investment in BVF for impairment periodically and records impairment charges when events or circumstances change indicating that a decline in the estimated fair values below the carrying values has occurred and such decline is other-than-temporary. No such impairment charges have been recognized as of December 31, 2009 and 2008.

The summarized statements of operations of the BVF Multifamily Venture for the years ended December 31, 2009, 2008 and 2007 is as follows:

|   | Twelve Months Ended September 30, |                 |                 |
|---|-----------------------------------|-----------------|-----------------|
|   | 2009                              | 2008            | 2007            |
| Revenue   | \$ 145,807,325                    | \$ 133,627,658  | \$ 83,430,010   |
| Expenses  | (217,798,943)                     | (201,169,088)   | (130,090,181)   |
| Gain on sale of real estate assets                | -                                 | 5,176,090       | -               |
| Net income (loss)                                 | (71,991,618 )                     | (62,365,340 )   | (46,660,171 )   |
| Noncontrolling interest                           | 11,652,901                        | 9,559,684       | 4,508,590       |
| Net income (loss) attributable to investment      | \$(60,338,717 )                   | \$(52,805,656 ) | \$(42,151,581 ) |
| Equity in loss of Multifamily Limited Partnership | \$(4,224,160 )                    | \$(3,696,790 )  | \$(2,950,926 )  |



## 6. MORTGAGE NOTES PAYABLE

Mortgage notes payable consists of the following at December 31, 2009 and 2008:

| Collateralized Property           | Original Principal Balance | Principal December 31, 2009 | Annual Interest Rate at December 31, 2009 (3) |   | Final Maturity Date | Monthly Payment | Principal December 31, 2008 |
|-----------------------------------|----------------------------|-----------------------------|---|---|---------------------|-----------------|-----------------------------|
| Berkshires of Columbia            | \$26,600,000               | \$25,319,542                | 4.86  | % | 2013                | \$140,527       | \$25,746,938                |
| Berkshires of Columbia (2nd note) | 4,563,000                  | 4,335,354                   | 6.12  | % | 2013                | 27,711          | 4,396,831                   |
| Berkshires of Columbia (3rd note) | 5,181,000                  | 5,130,411                   | 6.37  | % | 2014                | 32,306          | -                           |
| Seasons of Laurel                 | 99,200,000                 | 99,200,000                  | 6.10  | % | 2021                | 521,076         | 99,200,000                  |
| Laurel Woods                      | 4,100,000                  | 3,976,346                   | 5.17  | % | 2015                | 22,443          | 4,035,481                   |
| Laurel Woods (2nd note)           | 1,900,000                  | 1,887,966                   | 7.14  | % | 2015                | 12,820          | -                           |
| Bear Creek                        | 3,825,000                  | 3,825,000                   | 5.83  | % | 2016                | 19,203          | 3,825,000                   |
| Walden Pond                       | 12,675,000                 | 11,351,981                  | 4.86  | % | 2013                | 66,962          | 11,589,844                  |
| Gables of Texas                   | 5,325,000                  | 4,769,175                   | 4.86  | % | 2013                | 28,132          | 4,869,106                   |
| Bridgewater                       | 14,212,500                 | 13,597,052                  | 5.11  | % | 2013                | 77,254          | 13,813,547                  |
| Silver Hill (1)                   | 4,010,241                  | 3,446,752                   | 5.37  | % | 2026                | 26,237          | 3,570,181                   |
| Arboretum (1)                     | 6,894,193                  | 5,905,650                   | 5.37  | % | 2026                | 45,388          | 6,121,399                   |
| Reserves at Arboretum (4)         | 12,434,751                 | 12,434,751                  | 6.20  | % | 2015                | 182,848         | -                           |
| Arrowhead                         | 5,510,000                  | 5,266,324                   | 5.00  | % | 2014                | 29,579          | 5,351,939                   |
| Arrowhead (2nd note)              | 3,107,305                  | 3,001,444                   | 6.45  | % | 2014                | 19,618          | 3,039,236                   |
| Moorings                          | 5,775,000                  | 5,519,605                   | 5.00  | % | 2014                | 31,001          | 5,609,337                   |
| Moorings (2nd note)               | 3,266,654                  | 3,155,365                   | 6.45  | % | 2014                | 20,624          | 3,195,095                   |
| Country Place I & II              | 15,520,000                 | 14,834,949                  | 5.01  | % | 2015                | 83,410          | 15,093,799                  |
| Country Place (2nd note)          | 9,676,278                  | 9,345,242                   | 6.43  | % | 2015                | 60,965          | 9,463,393                   |
| Yorktowne                         | 16,125,000                 | 15,467,993                  | 5.13  | % | 2015                | 87,848          | 15,710,780                  |
| Yorktowne (2nd note)              | 7,050,000                  | 6,831,515                   | 6.12  | % | 2015                | 42,814          | 6,890,483                   |
| Brompton                          | 18,600,000                 | 18,600,000                  | 5.71  | % | 2014                | 91,455          | 18,600,000                  |
| Riverbirch                        | 5,750,000                  | 5,678,020                   | 5.57  | % | 2015                | 27,579          | 5,750,000                   |
| Lakeridge                         | 13,130,000                 | 12,693,293                  | 5.07  | % | 2014                | 71,047          | 12,887,938                  |
| Lakeridge (2nd note)              | 12,520,000                 | 12,104,399                  | 5.08  | % | 2014                | 67,824          | 12,289,653                  |
| Savannah at Citrus Park (2)       | 15,720,000                 | -                           | 5.21  | % | 2009                | 70,526          | 15,720,000                  |
| Briarwood                         | 13,200,000                 | 13,200,000                  | 6.43  | % | 2018                | 73,088          | 13,200,000                  |
| Chisholm                          | 6,953,000                  | 6,953,000                   | 6.25  | % | 2016                | 37,421          | 6,953,000                   |
| Standard at Lenox                 | 35,000,000                 | 35,000,000                  | 5.80  | % | 2016                | 174,806         | 35,000,000                  |
| Berkshires at Town Center         | 20,000,000                 | 20,000,000                  | 5.77  | % | 2017                | 99,372          | 20,000,000                  |
| Sunfield Lakes                    | 19,440,000                 | 19,440,000                  | 6.29  | % | 2017                | 105,295         | 19,440,000                  |
| Executive House                   | 27,000,000                 | 26,750,776                  | 5.52  | % | 2016                | 153,642         | 27,000,000                  |
| Executive House (2nd note)        | 3,700,000                  | 3,605,560                   | 5.99  | % | 2012                | 22,160          | 3,651,019                   |
| Glo                               | 29,993,273                 | 29,993,273                  | 1.52  | % | 2037                | 103,873         | -                           |
| Glo (2nd note)                    | 9,500,000                  | 9,500,000                   | 1.52  | % | 2010                | 12,073          | -                           |
| Glo (3rd note)                    | 2,710,000                  | 2,710,000                   | 1.52  | % | 2010                | 3,444           | -                           |

\$500,167,195 \$474,830,728

\$432,013,999

- (1) Represents assumed balance of the mortgage note payable as adjusted to its fair value as required by ASC 805-10. Annual interest rate at December 31, 2009 reflects interest rate used to calculate fair value of the debt when assumed.
- (2) Mortgage matured and outstanding balance was repaid during the year ended December 31, 2009.
- (3) All interest rates are fixed as of December 31, 2009 with the exception of the variable rate debt on the Glo property that was assumed at acquisition.
- (4) Represents amounts drawn on construction loan as of December 31, 2009. Total loan amount available is \$13,650,000.

All mortgage notes are collateralized by the referenced property, which are all multifamily residential apartment communities. All payments on the outstanding mortgage notes have been made timely and all mortgage loans were current as of December 31, 2009 and 2008. Also, there were no amounts of principal on the notes that were subject to delinquent principal or interest as of December 31, 2009.

Combined aggregate principal maturities of mortgage notes payable at December 31, 2009 are as follows:

|            |               |
|------------|---------------|
| 2010 (1)   | \$15,579,044  |
| 2011       | 4,924,807     |
| 2012       | 10,399,704    |
| 2013       | 62,607,515    |
| 2014       | 67,902,136    |
| Thereafter | 313,417,522   |
|            | \$474,830,728 |

(1) The supplemental mortgages outstanding and secured by the Glo property in the amount of \$12,210,000 mature in March 2010. As a requirement of the financing, the amounts maturing in 2010 are backed by irrevocable letters of credit in amounts sufficient to retire the debt. As a requirement of the irrevocable letters of credit, the issuing bank required corresponding cash be segregated to back the letters of credit. The segregated cash is reflected as restricted cash on the balance sheet as of December 31, 2009.

The Company determines the fair value of the mortgage notes payable based on the discounted future cash flows at a discount rate that approximates the Company's current effective borrowing rate for comparable loans. For purposes of determining fair value the Company groups its debt by similar maturity date for purposes of obtaining comparable loan information in order to determine fair values. In addition, the Company also considers the loan-to-value percentage of individual loans to determine if further stratification of the loans are appropriate in the valuation model. If the loan-to-value percentage for any particular loan is in excess of the majority of the debt pool, debt in excess of 80% loan-to-value will be treated as mezzanine debt and valued using a larger interest spread than the average debt pool. Based on this analysis, the Company has determined that the fair value of the mortgage notes payable approximates \$477,547,000 and \$416,730,000 at December 31, 2009 and 2008, respectively

## 7. REVOLVING CREDIT FACILITY - AFFILIATE

On June 30, 2005, the Company obtained new financing in the form of a revolving credit facility. The revolving credit facility in the amount of \$20,000,000 was provided by an affiliate of the Company. The facility provides for interest on borrowings at a rate of 5% above the 30 day LIBOR rate, as announced by Reuter's, and fees based on borrowings under the facility and various operational and financial covenants, including a maximum leverage ratio and a maximum debt service ratio. The agreement has a maturity date of December 31, 2006, with a one-time six-month extension available at the option of the Company. The terms of the facility were agreed upon through negotiations and were approved by the Audit Committee of the Board of Directors of the Company (the "Board"), which is comprised solely of directors who are independent under applicable rules and regulations of the Securities and Exchange Commission and the NYSE Amex. On October 30, 2006, the Company exercised its contractual option to extend the maturity date on the revolving credit facility available from the affiliate. The Company sent notice to the affiliate of its intent, pursuant to the credit agreement, to extend the maturity date of the revolving credit facility by six months, until June 30, 2007. On May 31, 2007, the Company executed an amendment to the Agreement. The amendment provides for an extension of the maturity date by replacing the current maturity date of June 30, 2007 with a 60-day notice of termination provision by which the lender can affect a termination of the commitment under the

Agreement and render all outstanding amounts due and payable. The amendment also adds a clean-up requirement to the Agreement, which requires the borrower to repay in full all outstanding loans and have no outstanding obligations under the Agreement for a 14 consecutive day period during each 365-day period. The clean-up requirement has been satisfied for the initial 365-day period starting on June 1, 2007.

During the year ended December 31, 2009 and 2008, the Company borrowed a total of \$15,720,000 pursuant to one advance and \$15,000,000 pursuant to two separate advances, respectively, related to the pay off of a matured mortgage in 2009 and acquisition activities of the Company during 2008. The Company repaid total advances of \$0 and \$15,000,000, respectively, during the same periods. There were \$15,720,000 and \$0 borrowings outstanding as of December 31, 2009 and 2008, respectively. The Company intends to repay the outstanding advance with proceeds from replacement debt on the Berkshires at Citrus Park property which is expected to close in the first quarter of 2010. The Company incurred interest and fees of \$121,503, \$122,648 and \$676,400 related to the facility during the year ended December 31, 2009, 2008 and 2007, respectively.

#### 8. DECLARATION OF DIVIDEND AND DISTRIBUTIONS

On March 25, 2003, the Board declared a dividend at an annual rate of 9%, on the stated liquidation preference of \$25 per share of the outstanding Preferred Shares which is payable quarterly in arrears, on February 15, May 15, August 15, and November 15 of each year to shareholders of record in the amount of \$0.5625 per share per quarter. For the years ended December 31, 2009 and 2008, the Company's aggregate dividends totaled \$6,700,785 and \$6,700,682, respectively, of which \$837,607 were payable and included on the balance sheet in Dividends and Distributions Payable as of December 31, 2009 and 2008, respectively.

On May 6, 2008, the Board authorized the general partner of the Operating Partnership to distribute quarterly distributions of \$1,000,000 each, in the aggregate, from its operating cash flows to common general and common limited partners, payable on August 15, 2008 and November 15, 2008. On the same day, the Board also declared a common dividend of \$0.016996 per share on the Company's Class B common stock payable concurrently with the Operating Partnership distributions. Also on May 6, 2008, the Board authorized the general partner of the Operating Partnership to distribute a special distribution of \$10,000,000 from its operating cash flows to common general and common limited partners, payable on May 15, 2008. On the same day, the Board also declared a common dividend of \$0.169963 per share on the Company's Class B common stock payable concurrently with the Operating Partnership distribution.

On December 30, 2009, the Board authorized the general partner of the Operating Partnership to distribute a special distribution of \$1,025. \$1,000 of the total distribution was an in-kind distribution of the Company's investment in the Mezzanine Loan LLC to KRF Company LLC, an affiliate of the company and majority holder of the Class B common stock. The remaining \$25 balance of the special distribution was paid to the two remaining holders in cash from its operating cash flows to common general and common limited partners, payable on December 30, 2009. On the same day, the Board also declared a common dividend of \$0.000017 per share on the Company's Class B common stock payable concurrently with the Operating Partnership distribution.

For the year ended December 31, 2009 and 2008, the Company declared a total of \$1,025 and \$12,000,000 respectively, of distributions to common shareholders. There was no dividend payable outstanding at December 31, 2009 or December 31, 2008. The Company's policy is to provide for common distributions is based on available cash and Board approval.

Holders of the Company's stock receiving distributions are subject to tax on the dividends received and must report those dividends as either ordinary income, capital gains, or non-taxable return of capital.

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The Company paid \$2.25 of distributions per preferred share (CUSIP 84690205) and less than \$0.01 per Class B common share, which is not publicly traded, during the year ended December 31, 2009. Pursuant to Internal Revenue Code Section 857 (b) (3) (C), for the years ended December 31, 2009, 2008 and 2007, the Company determined the taxable composition of the following cash distributions as set forth in the following table:

|  | 2009              |              | Tax Year Ended December 31,<br>2008 |              | 2007                |              |
|--|-------------------|--------------|-------------------------------------|--------------|---------------------|--------------|
|  | Dividend          | %            | Dividend                            | %            | Dividend            | %            |
| <b>Preferred Stock:</b>                      |                   |              |                                     |              |                     |              |
| Taxable ordinary dividend paid per share     | \$2.24            | 99.7         | % \$-                               | 0.0          | % \$2.18            | 96.8         |
| Taxable capital gain dividend paid per share | -                 | 0.0          | % 2.25                              | 100.0        | % -                 | 0.0          |
| Non-taxable distributions paid per share     | 0.01              | 0.3          | % -                                 | 0.0          | % 0.07              | 3.2          |
| <b>Total</b>                                 | <b>\$2.25</b>     | <b>100.0</b> | <b>% \$2.25</b>                     | <b>100.0</b> | <b>% \$2.25</b>     | <b>100.0</b> |
| <b>Common Stock:</b>                         |                   |              |                                     |              |                     |              |
| Taxable ordinary dividend paid per share     | \$-               | 0.0          | % \$-                               | 0.0          | % \$-               | 0.0          |
| Taxable capital gain dividend paid per share | -                 | 0.0          | % 0.237948                          | 100.0        | % -                 | 0.0          |
| Non-taxable distributions paid per share     | 0.000017          | 100.0        | % -                                 | 0.0          | % 0.067985          | 100.0        |
| <b>Total</b>                                 | <b>\$0.000017</b> | <b>100.0</b> | <b>% \$0.237948</b>                 | <b>100.0</b> | <b>% \$0.067985</b> | <b>100.0</b> |

Refer to note 2 for additional information regarding the tax status of the Company

## 9. EARNINGS PER SHARE

Net income (loss) per common share, basic and diluted, is computed as net income (loss) available to common shareholders divided by the weighted average number of common shares outstanding during the applicable period, basic and diluted.

The reconciliation of the basic and diluted earnings per common share for the year ended December 31, 2009, 2008 and 2007 follows:

|   | 2009            | Year Ended<br>2008 | 2008            |
|---|-----------------|--------------------|-----------------|
| Net loss from continuing operations                                   | \$ (28,591,252) | \$ (22,555,279)    | \$ (21,326,981) |
| Add: Loss attributable to noncontrolling interest in properties       | 376,955         | -                  | -               |
| Loss attributable to noncontrolling interest in Operating Partnership | 34,251,501      | -                  | -               |
| Less: Preferred dividends   | (6,700,785 )    | (6,700,682 )       | (6,700,792 )    |

|  |               |                 |                 |
|--|---------------|-----------------|-----------------|
| Income attributable to noncontrolling interest in properties   | -             | (5,528,481 )    | (2,031,195 )    |
| Income attributable to noncontrolling interest in Operating Partnership  | -             | (12,689,300)    | (3,904,400 )    |
| Net loss from continuing operations available to common shareholders   | \$ (663,581 ) | \$ (47,473,742) | \$ (33,963,368) |
| Discontinued operations  | \$ (175,072 ) | \$ 77,179,208   | \$ 30,191,208   |
| Net loss available to common shareholders  | \$ (838,653 ) | \$ 29,705,466   | \$ (3,772,160 ) |
| Net loss from continuing operations attributable to Parent Company per common share available to common shareholders, basic and diluted            | \$ (0.48 )    | \$ (33.76 )     | \$ (24.15 )     |
| Net income (loss) from discontinued operations attributable to Parent Company per common share available to common shareholders, basic and diluted | (0.12 )       | 54.89           | 21.47           |
| Net loss attributable to Parent Company per common share, basic and diluted  | \$ (0.60 )    | \$ 21.12        | \$ (2.68 )      |
| Weighted average number of common shares outstanding, basic and diluted  | 1,406,196     | 1,406,196       | 1,406,196       |

For the years ended December 31, 2009, 2008 and 2007, the Company did not have any common stock equivalents; therefore basic and dilutive earnings per share were the same.



10. COMMITMENTS AND CONTINGENCIES

The Company is party to certain legal actions arising in the ordinary course of its business, such as those relating to tenant issues. All such proceedings taken together are not expected to have a material adverse effect on the Company. While the resolution of these matters cannot be predicted with certainty, management believes that the final outcome of such legal proceedings and claims will not have a material adverse effect on the Company's liquidity, financial position or results of operations.

On January 25, 2008, the Company, through its wholly owned subsidiary BIR Arboretum Development L.L.C., executed a fixed rate first mortgage note for \$13,650,000, which is collateralized by the related property. The proceeds of the loan have been used to build a multifamily apartment community on a parcel of land adjacent to the Arboretum Place Apartments, a multifamily apartment community also owned by the Company. The interest rate on the note is fixed at 6.20% and has a term of 7 years, including a 2 year construction period and 5 years of permanent financing. The loan is a mortgage note and was granted with equity requirements that provide for the Company to make an equity investment of \$5,458,671, inclusive of land equity of \$2,150,000, in the project. As of December 31, 2009, advances on the mortgage total \$12,434,751.

The Company entered into two irrevocable letters of credit arrangements with a bank in relation to the JV BIR/Holland transaction. The irrevocable letters of credit were a requirement of the lender, who issued the debt secured by the property substantially owned by JV BIR/Holland, in order for the new ownership structure contemplated by the transaction to move forward. The irrevocable letters of credit are in place as a guarantee for two separate principal reduction payments of \$9,500,000 originally due in 2009 and \$2,710,000 due in 2010. On July 27, 2009, Fannie Mae granted a six-month extension for the amount due in 2009 of \$9,500,000 to March 15, 2010. The letters of credit are backed by cash segregated in accounts maintained at the bank. The cash is reflected as restricted cash on the balance sheet of the Company as of December 31, 2009.

Business Risks and Uncertainties

While economists declared the worst recession to hit the United States since the 1930's to be over in late 2009, with policymakers efforts to stabilize the banking system and provide a fiscal stimulus to the economy, the high national unemployment rate remains a drag to a strong economic recovery. While there are many indications of stabilization in both domestic and foreign economies, the signs of robust recovery have yet to manifest themselves. Even if the recession is technically over, labor markets tend to recover with some lag, and it is only when labor markets stabilize that there will be an increase in household formation, which represents the greatest driver for rental apartments.

The Company both believes and recognizes that real estate goes through cycles and while the drivers of these cycles can vary greatly from cycle to cycle, the outcome is generally the same with periods of improving values and profit growth followed by periods of stagnant or declining values and profit stagnation. The Company recognizes, however, that real estate investing requires a long-term perspective and, as history suggests, a company's ability to remain resilient during tough economic times will often lead to opportunities. In general, multifamily real estate fundamentals of well located quality real estate remained relatively steady during the recent economic downturn. Occupancy rates continue to hover in the low to mid-90% range for well located, well managed properties though continued weakness in the economy and/or a lack of improvement in employment rates could have a negative impact on both occupancy and rent levels. Credit worthy borrowers in the multifamily sector have continued to be able to access capital through Fannie Mae and Freddie Mac, and other sources, through 2009 and into 2010 at historically attractive rates. Though there is no assurance that under existing or future regulatory restrictions this source of capital, unique to multifamily borrowers, will continue to be available.

The Company continues to believe that projected demographic trends will favor the multifamily sector, driven primarily by the continued flow of echo boomers (children of baby boomers, age 20 to 29), the fastest growing segment of the population, and an increasing number of immigrants who are often renters by necessity. In many cases, the current economic climate has delayed many would be residents from entering the rental market and instead choosing to remain at home or to share rental units instead of renting their own space. This trend may be creating a backlog of potential residents who will enter the market as the economy begins to rebound and unemployment rates begin to trend back to historical norms. The Company's properties are generally located in markets where zoning restrictions, scarcity of land and high construction costs create significant barriers to new development. The Company believes it is well positioned to manage its portfolio through the remainder of this economic downturn and is prepared to take advantage of opportunities that present themselves during such times.

Due to the unfavorable economic conditions and the constrictions in the credit markets experienced in 2008 and 2009, and expected to continue in the near future of 2010, the Company plans to aggressively manage capital in various aspects of its operations, including limiting acquisitions, development and capital expenditures.

Specific to 2010, and in response to the constrictions in the credit market, the Company continues to pursue certain initiatives. As a result, the Company has rate locked a refinancing alternative for a loan that reached maturity in October 2009. The Company has secured financing to replace the entire balance of the matured debt.

## 11. DERIVATIVE FINANCIAL INSTRUMENTS

ASC 815-10 amends and expands the disclosure requirements of ASC 815-10 with the intent to provide users of financial statements with an enhanced understanding of: (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under ASC 815-10 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. ASC 815-10 requires qualitative disclosures about objectives and strategies for using derivatives, quantitative disclosures about the fair value of and gains and losses on derivative instruments, and disclosures about credit-risk-related contingent features in derivative instruments. ASC 815-10, as amended and interpreted, establishes accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts, and for hedging activities. As required by ASC 815-10, derivatives are recorded on the balance sheet at fair value. The accounting for changes in the fair value of derivatives depends on the intended use of the derivative and the resulting designation. Derivatives used to hedge the exposure to changes in the fair value of an asset, liability, or firm commitment attributable to a particular risk, such as interest rate risk, are considered fair value hedges. Derivatives used to hedge the exposure to variability in expected future cash flows, or other types of forecasted transactions, are considered cash flow hedges.

For derivatives designated as cash flow hedges, the effective portion of changes in the fair value of the derivative is initially reported in other comprehensive income (outside of earnings) and subsequently reclassified to earnings when the hedged transaction affects earnings, and the ineffective portion of changes in the fair value of the derivative is recognized directly in earnings. Hedge ineffectiveness is measured by comparing the changes in fair value or cash flows of the derivative hedging instrument with the changes in fair value or cash flows of the designated hedged item or transaction. For derivatives not designated as hedges, changes in fair value are recognized in earnings.

We do not use derivatives for trading or speculative purposes. When viewed in conjunction with the underlying and offsetting exposure that the derivatives are designed to hedge, we have not sustained a material loss from these hedges. We have utilized interest rate caps to add stability to interest expense, to manage our exposure to interest rate movements and as required by our lenders when entering into variable interest mortgage debt. Interest rate caps designated as cash flow hedges involve the receipt of variable-rate amounts if interest rates rise above a certain level in exchange for an up front premium.

During the year ended December 31, 2009, we acquired an interest rate cap through our investment in JV BIR/Holland. The derivative instrument was obtained as a requirement by the lender under the terms of the financing and limits increases in interest costs of the variable rate debt. The Company assessed the fair value of the derivative instrument, which reflects the estimated amount the Company would receive, or pay, for the same instrument in a current exchange at the reporting date. The valuation considers, among other things, interest rates at the time of the valuation, credit worthiness and risk of non performance of the counterparties considered in the valuation transaction. The resulting fair value of the derivative interest rate cap contract was deemed to be immaterial and no adjustment was made to reflect the fair value of the derivative instrument at December 31, 2009.

## 12. NONCONTROLLING INTERESTS IN OPERATING PARTNERSHIP

The following table sets forth the calculation of noncontrolling common interest in the Operating Partnership at December 31, 2009, 2008 and 2007:

|                   | 2009            | 2008          | 2007         |
|-------------------|-----------------|---------------|--------------|
| Net income (loss) | \$ (28,766,324) | \$ 54,623,929 | \$ 8,864,227 |
| Add:              |                 |               |              |

|  |                 |               |              |
|--|-----------------|---------------|--------------|
| Noncontrolling<br>common interest<br>in properties                           | 376,955         | (5,528,481 )  | (2,031,195)  |
| Income (loss) before<br>minority interest in<br>Operating<br>Partnership (1) | (28,389,369)    | 49,095,448    | 6,833,032    |
| Preferred Dividend   | (6,700,785 )    | (6,700,682 )  | (6,700,792)  |
| Income (loss)<br>available to common<br>equity                               | (35,090,154)    | 13,000,000    | 4,000,000    |
| Common Operating<br>Partnership units of<br>minority interest                | 97.61           | %             | 97.61 %      |
| Noncontrolling<br>common interest in<br>Operating<br>Partnership             | \$ (34,251,501) | \$ 12,689,300 | \$ 3,904,400 |

The following table sets forth a summary of the items affecting the noncontrolling common interest in the Operating Partnership:

|   | Non-Controlling<br>Common<br>Interest<br>in Operating<br>Partnership |
|---|--|
| Balance at December 31, 2008(1)                           | \$ -   |
| Non-controlling common interest in Operating Partnership  | (34,251,501)   |
| Distributions to common interest in Operating Partnership | -  |
| Balance at December 31, 2009                              | \$ (34,251,501)  |

(1) Prior to adoption of ASC 810-10 by the Company on January 1, 2009, non-controlling common interest in the Operating Partnership was carried at zero on the balance sheet due to the non-controlling interest having no obligation to fund losses/deficits. In the years ended December 31, 2008 and 2007, although activities resulted in a net income position due to the sale of properties, there was no positive basis in the Operating Partnership and resultantly no allocation to the non-controlling interest in the Operating Partnership, except to the extent distributions were paid.

As of December 31, 2009 and 2008, the non-controlling interest in the Operating Partnership consisted of 5,242,223 Operating Partnership units held by parties other than the Company.

### 13. RELATED PARTY TRANSACTIONS

The Company pays property management fees to an affiliate for property management services. The fees are payable at a rate of 4% of gross income.

The Company pays asset management fees to an affiliate for asset management services. These fees are payable quarterly, in arrears, and may be paid only after all distributions currently payable on the Company's Preferred Shares

have been paid. Effective April 4, 2003, under the advisory services agreement, the Company will pay Berkshire Advisor an annual asset management fee equal to 0.40%, up to a maximum of \$1,600,000 in any calendar year, as per an amendment to management agreement, of the purchase price of real estate properties owned by the Company, as adjusted from time to time to reflect the then current fair market value of the properties. The purchase price is defined as the capitalized basis of an asset under GAAP, including renovation or new construction costs, costs of acquisition or other items paid or received that would be considered an adjustment to basis. Prior to April 4, 2003, asset management fees paid by the Predecessor were based on fees specified under the terms of the agreements governing the various Predecessor entities. The Company also reimburses affiliates for certain expenses incurred in connection with the operation of the properties, including administrative expenses and salary reimbursements.

The Company pays acquisition fees to an affiliate, Berkshire Advisor, for acquisition services. These fees are payable upon the closing of an acquisition of real property. The fee is equal to 1% of the purchase price of any new property acquired directly or indirectly by the Company. The purchase price is defined as the capitalized basis of an asset under GAAP, including renovations or new construction costs, or other items paid or received that would be considered an adjustment to basis. The purchase price does not include acquisition fees and capital costs of a recurring nature. The Company paid a fee on the acquisition of the Glo Apartments. Pursuant to the Company's adoption of ASC 805-10 as of January 1, 2009, the acquisition fee was charged to operating expenses for the year ended December 31, 2009. All acquisition fees paid in 2008, 2007 and prior years have been have been capitalized and are included in the caption "Multifamily apartment communities" in the accompanying balance sheet.

During the years ended December 31, 2009, 2008 and 2007, the Company incurred fees on the following acquisitions:

| Acquisition     | Acquisition | Acquisition | Acquisition |
|-----------------|-------------|-------------|-------------|
|                 | Fee         | Fee         | Fee         |
|                 | 2009        | 2008        | 2007        |
| GLO             | \$ 427,500  | \$ -        | \$ -        |
| Executive House | -           | 500,000     | -           |
| Hampton House   | -           | -           | 205,000     |
| Sunfield Lakes  | -           | -           | 242,250     |
|                 | \$ 427,500  | \$ 500,000  | \$ 447,250  |

The Company pays a construction management fee to an affiliate, Berkshire Advisor, for services related to the management and oversight of renovation and rehabilitation projects at its properties. The Company paid or accrued \$438,965 and 612,312 in construction management fees for the year ended December 31, 2009 and 2008, respectively. The fees are capitalized as part of the project cost in the year they are incurred.

The Company pays development fees to an affiliate, Berkshire Residential Development, for property development services. As of December 31, 2009, the Company has completed the development of the Arboretum Land development project and has incurred fees totaling \$902,500 for the project, of which of \$202,500 were incurred during the year ended December 31, 2009. The Company incurred \$300,000 and \$400,000 of development fees on the same project in the years ended December 31, 2008 and 2007, respectively. The fees, of which \$270,750 is related to predevelopment activities and \$631,750 is related to the development phase, are based on the project's development/construction costs. As of December 31, 2009 and 2008, \$202,500 and \$0, remained payable related to the project respectively.

Amounts accrued or paid to the Company's affiliates for the year ended December 31, 2009, 2008 and 2007 are as follows:

|                              | 2009        | 2008        | 2007        |
|------------------------------|-------------|-------------|-------------|
| Property management fees     | \$3,041,240 | \$3,335,681 | \$3,374,992 |
| Expense reimbursements       | 200,900     | 195,900     | 250,596     |
| Salary reimbursements        | 9,243,927   | 8,795,648   | 9,380,153   |
| Asset management fees        | 1,649,256   | 1,673,441   | 1,673,441   |
| Acquisition fees             | 427,500     | 500,000     | 447,250     |
| Construction management fees | 438,965     | 612,312     | 808,024     |

|                                       |                     |                     |                     |
|---------------------------------------|---------------------|---------------------|---------------------|
| Development fees                      | 202,500             | 300,000             | 400,000             |
| Interest on revolving credit facility | 121,503             | 122,648             | 676,400             |
| <b>Total</b>                          | <b>\$15,325,791</b> | <b>\$15,535,630</b> | <b>\$17,010,856</b> |

Expense reimbursements due to affiliates of \$5,540,487 and \$2,920,573 are included in due to affiliates at December 31, 2009 and 2008, respectively.

Expense reimbursements due from affiliates of \$3,390,859 and \$629,322 are included in due to affiliates at December 31, 2009 and 2008, respectively.

Amounts due to affiliates of \$2,149,628 and \$2,291,250 at December 31, 2009 and 2008, respectively, represent intercompany development fees, expense reimbursements and shared services.

During the year ended December 31, 2009 and 2008, the Company borrowed a total of \$15,720,000 pursuant to one advance and \$15,000,000 pursuant to two separate advances, respectively, related to the pay off of a matured mortgage in 2009 and acquisition activities of the Company. The Company repaid total advances of \$0 and \$15,000,000, respectively, during the same periods. There were \$15,720,000 and \$0 borrowings outstanding as of December 31, 2009 and 2008, respectively. The Company incurred interest and fees of \$121,503, \$122,648 and \$676,400 related to the facility during the year ended December 31, 2009, 2008 and 2007, respectively.

In addition to the fees listed above, the Multifamily Limited Partnership Venture paid construction management fees of \$570,602, \$3,118,380 and \$2,313,745, property management fees of \$5,841,648, \$5,637,868 and \$3,692,478 and asset management fees of \$4,763,937, \$3,282,256 and \$2,362,104 to Berkshire Advisor during 2009, 2008 and 2007, respectively.

On November 12, 2009, the Audit Committee of the Board of Directors (which committee is comprised of our three directors who are independent under applicable rules and regulations of the SEC and the NYSE Amex) approved an amendment to the Advisory Services Agreement with our Advisor, who is an affiliate of the Company, to add an additional variable incentive asset management fee component (the "Incentive Advisory Fee"), which will be based on the increase in value of the Company over a base value ("Base Value") as defined in the Amendment to the Advisory Service Agreement (the "Amendment") to be established as of December 31, 2009. The Amendment, which will become effective as of January 1, 2010, would require the Company to accrue an incentive asset management fee to the Advisor of 10% of the increase in value of the Company above the established Base Value (with a 12% cap if the formula exceeds 10% under certain circumstances). The Incentive Advisory Fee is variable and therefore to the extent the value of the Company as defined in the Amendment decreases the accrued incentive fee would be reduced accordingly. At inception of the plan, January 1, 2010, the liability under the Amendment will be zero, and future liability will be based upon the growth of value of the Company over the Base Value. The objective of the plan is to provide key management of the Advisor, which manages the Company, an incentive to grow the value of the company.

Related party arrangements are approved by the independent directors of the Company and are evidenced by a written agreement between the Company and the affiliated entity providing the services.

#### 14. SELECTED INTERIM FINANCIAL INFORMATION (UNAUDITED)



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The operating results have been revised to reflect the sale of Century, St. Marin/Karrington, Westchester West and Westchase in 2008, Dorsey's and Trellis in 2007. The operating results for all quarters have been reclassified to discontinued operations to provide comparable information.

|  | 2009 Quarter Ended |               |               |               |
|--|--------------------|---------------|---------------|---------------|
|  | March 31,          | June 30,      | September 30, | December 31,  |
| Total revenue  | \$ 18,766,981      | \$ 19,904,834 | \$ 20,447,321 | \$ 20,342,943 |
| Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations | (6,731,775 )       | (6,949,127 )  | (5,099,189 )  | (4,639,707 )  |
| Income (loss) from continuing operations   | (8,059,249 )       | (8,779,831 )  | (6,145,865 )  | (5,606,307 )  |
| Discontinued operations:   |                    |               |               |               |
| Income (loss) from operations  | (157,969 )         | (4,582 )      | 2,097         | (14,618 )     |
| Gain on disposition of real estate assets  | -                  | -             | -             | -             |
| Income (loss) from discontinued operations   | (157,969 )         | (4,582 )      | 2,097         | (14,618 )     |
| Net income (loss)  | (8,217,218 )       | (8,784,413 )  | (6,143,768 )  | (5,620,925 )  |
| Preferred dividend   | (1,675,196 )       | (1,675,196 )  | (1,675,197 )  | (1,675,196 )  |
| Net income (loss) available to common shareholders   | \$ (231,581 )      | \$ (248,940 ) | \$ (186,231 ) | \$ (171,901 ) |
| Basic and diluted earnings per share:  |                    |               |               |               |
| Loss from continuing operations attributable to Parent Company   | \$ (0.05 )         | \$ (0.17 )    | \$ (0.13 )    | \$ (0.13 )    |
| Income (loss) from discontinued operations attributable to Parent Company  | (0.11 )            | (0.01 )       | 0.00          | (0.00 )       |
| Income (loss) attributable to Parent   | \$ (0.16 )         | (0.18 )       | (0.13 )       | (0.13 )       |

Company

|  |              |              |              |              |
|--|--------------|--------------|--------------|--------------|
| Weighted average<br>number of common<br>shares outstanding | \$ 1,406,196 | \$ 1,406,196 | \$ 1,406,196 | \$ 1,406,196 |
|--|--------------|--------------|--------------|--------------|

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|  | 2008 Quarter Ended |               |                 |               |
|--|--------------------|---------------|-----------------|---------------|
|  | March 31,          | June 30,      | September 30,   | December 31,  |
| Total revenue  | \$ 16,829,057      | \$ 17,249,858 | \$ 17,459,764   | \$ 18,598,581 |
| Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations | (5,220,538 )       | (4,449,870 )  | (4,827,391 )    | (5,157,237 )  |
| Income (loss) from continuing operations   | (5,750,101 )       | (5,334,893 )  | (5,850,355 )    | (5,619,930 )  |
| Discontinued operations:   |                    |               |                 |               |
| Net income (loss) from operations  | (528,446 )         | (1,114,181 )  | (114,427 )      | (546,911 )    |
| Gain on disposition of real estate assets  | -                  | 27,031,898    | 3,591           | 52,451,998    |
| Income (loss) from discontinued operations   | (528,446 )         | 25,917,717    | (110,836 )      | 51,905,087    |
| Net income (loss)  | (7,441,990 )       | 9,639,035     | (7,141,558 )    | 41,350,661    |
| Preferred dividend   | (1,675,197 )       | (1,675,197 )  | (1,675,144 )    | (1,675,144 )  |
| Net income (loss) available to common shareholders   | \$ (9,117,187 )    | \$ 7,963,838  | \$ (8,816,703 ) | \$ 39,675,518 |
| Basic and diluted earnings per share:  |                    |               |                 |               |
| Loss from continuing operations attributable to Parent Company   | \$ (6.11 )         | \$ (12.70 )   | \$ (6.19 )      | \$ (8.76 )    |
| Income (loss) from discontinued operations attributable to Parent Company  | (0.38 )            | 18.43         | (0.08 )         | 36.92         |
| Income (loss) attributable to Parent Company   | (6.49 )            | 5.73          | (6.27 )         | 28.16         |
| Weighted average number of common shares outstanding   | \$ 1,406,196       | \$ 1,406,196  | \$ 1,406,196    | \$ 1,406,196  |

## 15. PROFORMA CONDENSED FINANCIAL INFORMATION (UNAUDITED)

During the years ended December 31, 2009, 2008 and 2007, the Company did not acquire any properties deemed to be individually significant in accordance with Regulation S-X, Rule 3-14 "Special Instructions for Real Estate Operations to be Acquired".

As discussed in Footnotes 1 and 2, the Company and certain of its subsidiaries acquired interests in the Glo property during 2009. The proforma financial information set forth below is based upon the Company's historical Consolidated Statements of Income (Loss) for the years ended December 31, 2009 and 2008, adjusted to give effect to these transactions at the beginning of each of the years presented.

The pro forma financial information is presented for informational purposes only and may not be indicative of what actual results of operations would have been had the transaction occurred at the beginning of each year, nor does it attempt to represent the results of operations for future periods.

|  | Year ended December 31, |               |
|--|-------------------------|---------------|
|  | 2009                    | 2008          |
|  | (unaudited)             | (unaudited)   |
| Revenues from rental property  | \$ 80,246,740           | \$ 72,327,613 |
| Net (loss) income  | \$ (28,699,846)         | \$ 53,337,700 |
| Net (loss) income attributable to common shareholders                                      | \$ (772,175 )           | \$ 28,419,237 |
| Net (loss) income attributable to common shareholders, per common share, basic and diluted | \$ (0.55 )              | \$ 20.21      |

## 16. DISCLOSURES ABOUT FAIR VALUE OF FINANCIAL INSTRUMENTS

The following methods and assumptions were used to estimate the fair value of financial instruments:

## Cash and cash equivalents

For those cash equivalents with maturities of three months or less from the date of acquisition, the carrying amount of the investment is a reasonable estimate of fair value.

## Mortgage notes payable

Market fixed rate mortgage notes payable – For fixed rate mortgages that have been obtained in the open market, the fair value is based on the borrowing rates currently available to the Company with similar terms and average maturities. The Company’s carrying and estimated fair value amounts of the mortgages are disclosed in note 6 – Mortgage Notes Payable.

Assumed fixed rate mortgage notes payable – For fixed rate mortgage notes payable that the Company has assumed as part of various property acquisitions, the net present value of future cash flows method was used to determine the fair value of the liabilities when recorded by the Company. At December 31, 2009 and 2008 the carrying amount is the fair value of the assumed mortgage notes payable less any principal amortization since assumption.

17. LEGAL PROCEEDINGS

The Company was party to a legal proceeding initiated by a seller/developer from whom the Company acquired a property in 2005. The dispute involved the interpretation of certain provisions of the purchase and sales agreement related to post acquisition construction activities. Specifically, the purchase and sales agreement provided that if certain conditions were met, the seller/developer would develop a vacant parcel of land contiguous to the acquired property with 18 new residential apartment units (the “New Units”) for the benefit of the Company at an agreed-upon price. The purchase and sales agreement also provided the opportunity for the seller/developer to build a limited number of garages (the “Garages”) for the existing apartment units for the benefit of the Company at an agreed-upon price. The Company settled the matter related to the Garages with the seller/developer and construction is complete.

In 2006, the Company accrued \$190,000 with respect to the New Units matter based on a settlement offer extended to the plaintiff, which was not accepted at that time. On November 9, 2007, the judge issued a summary judgment against the Company with respect to the construction of the New Units. The judgment did not specify damages, which the plaintiff will be required to demonstrate at trial. On February 13, 2008, the court entered judgment related to the New Units on the seller/developer’s behalf awarding them the amount of \$774,292 for costs and damages. The Company appealed the lower court decision and as a condition of the appeals process, the Company was required to post an appeal bond with the court, which was backed by an irrevocable letter of credit. In July 2009, the appeal court ruled against the Company on its appeal and upheld the lower court judgment. The Company used operating cash to pay the judgment of \$774,292 and legal fees, costs and interest of approximately \$163,700. The Company cancelled the letter of credit at which time the segregated cash backing the irrevocable letter of credit was released and returned to operating cash.

The Company and our properties are not subject to any other material pending legal proceedings and we are not aware of any such proceedings contemplated by governmental authorities.

18. SUBSEQUENT EVENTS

On March 15, 2010, the supplemental mortgages outstanding and secured by the Glo property in the amount of \$12,210,000 matured. As a requirement of the financing, the amounts maturing on March 15, 2009 were backed by irrevocable letters of credit which were used to retire the matured debt. Additionally, as a requirement of the bank that issued the irrevocable letters of credit, the Company was required to segregate cash in an amount sufficient to back the letters of credit. On March 15, 2010, the segregated cash was used to settle the letters of credit. The segregated cash is reflected as restricted cash on the

balance sheet as of December 31, 2009.



BERKSHIRE INCOME REALTY, INC.  
SCHEDULE III – REAL ESTATE AND ACCUMULATED DEPRECIATION  
AS OF DECEMBER 31, 2009

| Description                                   | Encumbrances | Initial Costs<br>Buildings and<br>Land | Cost<br>Capitalized<br>Subsequent to<br>Acquisition | Total Costs at<br>December 31,<br>2009 | Accumulated<br>Depreciation | Total Cost<br>Net of<br>Accumulated<br>Depreciation | Year<br>Acquired | Depreciation<br>Life |
|---|--------------|--|---|--|-----------------------------|---|------------------|----------------------|
| Berkshires<br>of Columbia                     | \$34,785,307 | \$13,320,965                           | \$9,834,012   | \$23,154,977                           | \$14,171,979                | \$8,982,998   | 1983             | (1)                  |
| Seasons of<br>Laurel                          | 99,200,000   | 63,083,489                             | 26,034,221  | 89,117,710                             | 56,071,278                  | 33,046,432  | 1985             | (1)                  |
| Walden<br>Pond /<br>Gables<br>Laurel<br>Woods | 16,121,156   | 28,357,253                             | 2,212,931   | 30,570,184                             | 15,317,617                  | 15,252,567  | 1983/2003        | (1)                  |
| Bear Creek                                    | 5,864,312    | 5,216,275                              | 776,022   | 5,992,297                              | 1,688,293                   | 4,304,004   | 2004             | (1)                  |
| Bridgewater                                   | 3,825,000    | 4,845,550                              | 854,072   | 5,699,622                              | 1,703,600                   | 3,996,022   | 2004             | (1)                  |
| Silver Hill                                   | 13,597,052   | 18,922,831                             | 530,468   | 19,453,299                             | 4,605,404                   | 14,847,895  | 2004             | (1)                  |
| Arboretum                                     | 3,446,752    | 4,885,312                              | 596,052   | 5,481,364                              | 1,382,017                   | 4,099,347   | 2004             | (1)                  |
| Reserves at<br>Arboretum<br>Place (2)         | 5,905,650    | 11,460,551                             | 1,035,069   | 12,495,620                             | 3,054,705                   | 9,440,915   | 2004             | (1)                  |
| Arrowhead                                     | 12,434,751   | 1,529,123                              | 17,015,522  | 18,544,645                             | 601,446                     | 17,943,199  | 2009             | (3) (1)              |
| Moorings                                      | 8,267,768    | 8,655,532                              | 1,294,888   | 9,950,420                              | 2,562,435                   | 7,387,986   | 2004             | (1)                  |
| Country<br>Place I                            | 8,674,970    | 9,147,765                              | 1,252,570   | 10,400,335                             | 2,631,286                   | 7,769,049   | 2004             | (1)                  |
| Country<br>Place II                           | 14,649,619   | 13,844,787                             | 1,529,570   | 15,374,357                             | 3,619,483                   | 11,754,874  | 2004             | (1)                  |
| Yorktowne                                     | 9,530,572    | 8,657,461                              | 1,022,966   | 9,680,427                              | 2,293,361                   | 7,387,065   | 2004             | (1)                  |
| Berkshires<br>on<br>Brompton                  | 22,299,508   | 21,616,443                             | 7,084,639   | 28,701,082                             | 8,876,205                   | 19,824,877  | 2004             | (1)                  |
| Riverbirch                                    | 18,600,000   | 14,500,528                             | 7,798,074   | 22,298,602                             | 7,867,797                   | 14,430,805  | 2005             | (1)                  |
| Lakeridge                                     | 5,678,020    | 8,198,193                              | 2,391,411   | 10,589,604                             | 2,767,913                   | 7,821,691   | 2005             | (1)                  |
| Berkshires<br>at Citrus<br>Park               | 24,797,692   | 34,411,075                             | 1,445,629   | 35,856,704                             | 7,267,226                   | 28,589,478  | 2005             | (1)                  |
| Briarwood<br>Village                          | -            | 27,601,083                             | 1,212,319   | 28,813,402                             | 5,810,801                   | 23,002,601  | 2005             | (1)                  |
| Chisholm<br>Place                             | 13,200,000   | 13,929,396                             | 2,091,365   | 16,020,761                             | 3,195,156                   | 12,825,605  | 2006             | (1)                  |
| Berkshires<br>at Lenox<br>Park                | 6,953,000    | 9,600,527                              | 1,994,151   | 11,594,678                             | 2,461,074                   | 9,133,604   | 2006             | (1)                  |
| Berkshires<br>at Town                         | 35,000,000   | 47,040,404                             | 5,818,845   | 52,859,249                             | 9,117,987                   | 43,741,262  | 2006             | (1)                  |
|   | 20,000,000   | 20,254,316                             | 9,725,442   | 29,979,758                             | 4,162,834                   | 25,816,924  | 2007             | (1)                  |

|                             |               |               |               |               |               |               |      |     |
|-----------------------------|---------------|---------------|---------------|---------------|---------------|---------------|------|-----|
| Center<br>Sunfield<br>Lakes | 19,440,000    | 23,870,680    | 1,454,241     | 25,324,921    | 3,302,447     | 22,022,474    | 2007 | (1) |
| Executive<br>House          | 30,356,336    | 50,205,199    | 639,967       | 50,845,166    | 3,041,038     | 47,804,128    | 2008 | (1) |
| Glo                         | 42,203,263    | 41,602,374    | 301,141       | 41,903,514    | 1,145,595     | 40,757,919    | 2009 | (1) |
| Total                       | \$474,830,728 | \$504,757,112 | \$105,945,587 | \$610,702,698 | \$168,718,977 | \$441,983,721 |      |     |

- (1) Depreciation of buildings are calculated over useful lives ranging from 25 to 27.5 years and depreciation of improvements are calculated over useful lives ranging from 5 to 20 years.
- (2) Represents amounts drawn on construction loan as of December 31, 2009. Total loan amount available is \$13,650,000.
- (3) Property was acquired as raw land in 2004. Development of the multifamily apartment community on the land was completed and fully leased during the year ended December 31, 2009.



A summary of activity for real estate and accumulated depreciation is as follows:

| Real Estate                           | 2009          | 2008          | 2007          |
|---------------------------------------|---------------|---------------|---------------|
| Balance at beginning of year          | \$555,681,036 | \$608,505,122 | \$594,268,122 |
| Acquisitions and improvements         | 55,396,236    | 81,198,958    | 64,346,332    |
| Write-off of fully depreciated assets | -             | -             | (26,300,331)  |
| Dispositions                          | (374,574)     | (134,023,044) | (23,809,001)  |
| Balance at end of year                | \$610,702,698 | \$555,681,036 | \$608,505,122 |

| Accumulated Depreciation              | 2009          | 2008          | 2007          |
|---------------------------------------|---------------|---------------|---------------|
| Balance at beginning of year          | \$136,678,464 | \$144,240,061 | \$148,670,523 |
| Depreciation expense                  | 32,136,098    | 30,171,355    | 32,709,886    |
| Write-off of fully depreciated assets | -             | -             | (26,300,331)  |
| Dispositions                          | (95,585)      | (37,732,952)  | (10,840,017)  |
| Balance at end of year                | \$168,718,977 | \$136,678,464 | \$144,240,061 |

The aggregate cost of the Company's multifamily apartment communities for federal income tax purposes was \$478,371,533, \$459,441,537 and \$511,394,602 as of December 31, 2009, 2008 and 2007, respectively and the aggregate accumulated depreciation for federal income tax purposes was \$112,754,107, \$101,823,733 and \$98,195,945 as of December 31, 2009, 2008 and 2007, respectively.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, Berkshire Income Realty, Inc. has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

March 31, 2010

BERKSHIRE INCOME REALTY, INC.  
BY: /s/ David C. Quade  
NAME: David C. Quade  
TITLE: President

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

| Signature   | Title  | Date           |
|---|--|----------------|
| /s/ Douglas Krupp<br>Douglas Krupp                      | Chairman of the Board of Directors   | March 31, 2010 |
| /s/ David C. Quade<br>David C. Quade                    | President, Chief Financial Officer<br>and<br>Director (Principal Executive<br>Officer) | March 31, 2010 |
| /s/ Robert M. Kaufman<br>Robert M. Kaufman              | Director   | March 31, 2010 |
| /s/ Randolph G.<br>Hawthorne<br>Randolph G. Hawthorne   | Director   | March 31, 2010 |
| /s/ Richard B. Peiser<br>Richard B. Peiser              | Director   | March 31, 2010 |
| /s/ Christopher M.<br>Nichols<br>Christopher M. Nichols | Vice President and Controller<br>(Principal Accounting Officer)                        | March 31, 2010 |



