

BERKSHIRE INCOME REALTY INC
Form 10-Q
November 16, 2009

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

Form 10-Q

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

x

For the quarterly period ended September 30, 2009

o

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.

Maryland (State or other jurisdiction of incorporation or organization)	32-0024337 (I. R. S. Employer Identification No.)
One Beacon Street, Boston, Massachusetts (Address of principal executive offices)	02108 (Zip Code)

(617) 523-7722
(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, 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 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

Accelerated Filer

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

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

There were 1,406,196 shares of Class B common stock outstanding as of November 13, 2009.

BERKSHIRE INCOME REALTY, INC.

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Part I FINANCIAL INFORMATION
Item 1. CONSOLIDATED FINANCIAL STATEMENTS

BERKSHIRE INCOME REALTY, INC.
CONSOLIDATED BALANCE SHEETS
(unaudited)

	September 30, 2009	December 31, 2008
ASSETS		
Multifamily apartment communities, net of accumulated depreciation of \$160,666,556 and \$136,678,464, respectively	\$446,954,992	\$419,002,572
Cash and cash equivalents	10,660,889	24,227,615
Cash restricted for tenant security deposits	1,876,309	1,851,400
Cash restricted other	12,621,013	-
Replacement reserve escrow	2,855,457	5,952,952
Prepaid expenses and other assets	10,963,039	9,314,446
Investment in Multifamily Venture Limited Partnership	12,167,849	15,425,410
Investment in Mezzanine Loan Limited Liability Company	-	947,293
Acquired in place leases and tenant relationships, net of accumulated amortization of \$1,038,071 and \$888,254, respectively	232,008	388,935
Deferred expenses, net of accumulated amortization of \$1,772,593 and \$1,244,326, respectively	3,572,591	3,306,807
Total assets	\$501,904,147	\$480,417,430
LIABILITIES AND EQUITY		
Liabilities:		
Mortgage notes payable	\$482,369,963	\$432,013,999
Due to affiliates, net	2,117,453	2,291,250
Dividend and distributions payable	837,607	837,607
Accrued expenses and other liabilities	10,414,556	11,724,250
Tenant security deposits	1,898,230	1,800,105
Total liabilities	497,637,809	448,667,211
Commitments and contingencies (Note 9)	-	-
Equity:		
Noncontrolling interest in properties	707,292	293,650
Noncontrolling interest in Operating Partnership	(27,230,771)	-
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 September 30, 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 September 30, 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 September 30, 2009 and December 31, 2008, respectively	14,062	14,062

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Excess stock, \$.01 par value, 15,000,000 shares authorized, 0 shares issued and outstanding at September 30, 2009 and December 31, 2008, respectively	-	-
Accumulated deficit	(39,435,075)	(38,768,323)
Total equity	4,266,338	31,750,219
Total liabilities and equity	\$ 501,904,147	\$480,417,430

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

BERKSHIRE INCOME REALTY, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited)

	Three months ended September 30,		Nine months ended September 30,	
	2009	2008	2009	2008
Revenue:				
Rental	\$ 18,978,189	\$ 16,329,406	\$ 55,152,551	\$ 47,991,601
Interest	10,347	144,809	92,019	507,891
Utility reimbursement	430,504	333,257	1,215,602	1,016,519
Other	1,028,281	652,291	2,658,964	2,022,667
Total revenue	20,447,321	17,459,763	59,119,136	51,538,678
Expenses:				
Operating	4,941,356	4,357,738	14,944,595	13,122,757
Maintenance	1,358,994	1,253,946	3,643,027	3,600,259
Real estate taxes	2,133,677	2,050,884	6,651,627	5,648,965
General and administrative	990,714	812,956	4,576,468	2,198,568
Management fees	1,194,141	1,095,892	3,557,237	3,255,711
Depreciation	8,081,318	6,945,770	24,083,677	20,798,984
Interest	6,732,894	5,640,983	19,684,864	17,036,620
Amortization of acquired in-place leases and tenant relationships	113,416	128,987	757,732	245,468
Total expenses	25,546,510	22,287,156	77,899,227	65,907,332
Loss before equity in loss of Multifamily Venture Limited Partnership and Mezzanine Loan Limited Liability Company and loss from discontinued operations				
	(5,099,189)	(4,827,393)	(18,780,091)	(14,368,654)
Equity in loss of Multifamily Venture Limited Partnership				
	(1,046,676)	(1,066,063)	(3,257,561)	(2,615,887)
Equity in income (loss) of Mezzanine Loan Limited Liability Company				
	-	43,101	(947,293)	49,192
Loss from continuing operations				
	(6,145,865)	(5,850,355)	(22,984,945)	(16,935,349)
Discontinued operations:				
Income (loss) from discontinued operations	2,097	(114,424)	(160,454)	(1,757,053)
Gain on disposition of real estate estates	-	3,591	-	27,035,489
Income (loss) from discontinued operations	2,097	(110,833)	(160,454)	25,278,436
Net income (loss)				
	(6,143,768)	(5,961,188)	(23,145,399)	8,343,087
Net (income) loss attributable to noncontrolling interest in properties				
	26,899	(204,270)	273,465	(598,302)
Net (income) loss attributable to noncontrolling interest in Operating Partnership				
	7,605,835	(976,100)	27,230,771	(12,689,300)
Net income (loss) attributable to Parent Company				
	1,488,966	(7,141,558)	4,358,837	(4,944,515)
Preferred dividend				
	(1,675,197)	(1,675,143)	(5,025,589)	(5,025,539)
Net loss available to common shareholders				
	\$(186,231)	\$(8,816,701)	\$(666,752)	\$(9,970,054)

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Net loss from continuing operations attributable to Parent Company per common share, basic and diluted	\$ (0.13)	\$ (6.19)	\$ (0.36)	\$ (25.07)
Net income (loss) from discontinued operations attributable to Parent Company per common share, basic and diluted	\$ (0.00)	\$ (0.08)	\$ (0.11)	\$ 17.98)
Net loss attributable to Parent Company, per common share, basic and diluted	\$ (0.13)	\$ (6.27)	\$ (0.47)	\$ (7.09)
Weighted average number of common shares outstanding, basic and diluted	1,406,196		1,406,196		1,406,196		1,406,196	
Dividend declared per common share	\$ 0.00		\$ 0.00		\$ 0.00		\$ 0.20	

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

BERKSHIRE INCOME REALTY, INC.
CONSOLIDATED STATEMENT OF CHANGES IN EQUITY
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2009
(unaudited)

	Parent Company Shareholders				Accumulated Deficit	Noncontrolling Interests – Operating Partnership		Total Equity
	Series A Preferred Shares	Stock Amount	Class B Common Shares	Common Amount		Noncontrolling Interests – Properties	Noncontrolling Interests – Partnership	
Balance at January 1, 2009	2,978,110	\$70,210,830	1,406,196	\$14,062	\$(38,768,323)	\$293,650	\$-	\$31,750,219
Net income (loss)	-	-	-	-	4,358,837	(273,465)	(27,230,771)	(23,145,399)
Contributions	-	-	-	-	-	1,404,801	-	1,404,801
Distributions	-	-	-	-	-	(717,694)	-	(717,694)
Distributions to preferred shareholders	-	-	-	-	(5,025,589)	-	-	(5,025,589)
Balance at September 30, 2009	2,978,110	\$70,210,830	1,406,196	\$14,062	\$(39,435,075)	\$707,292	\$(27,230,771)	\$4,266,338

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

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

For the nine months ended
September 30,
2009 2008

Cash flows from operating activities:

Net income (loss)	\$(23,145,399)	\$8,343,087
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Amortization of deferred financing costs	529,964	389,993
Amortization of acquired in-place leases and tenant relationships	757,732	245,468
Depreciation	24,083,677	24,360,890
Equity in loss of Multifamily Venture Limited Partnership	3,257,561	2,615,887
Equity in (income) loss of Mezzanine Loan Limited Liability Company	947,293	(49,192)
Gain on real estate assets related to involuntary conversion	(90,585)	(129,146)
Gain on disposition of real estates assets	-	(27,035,489)
Write off deferred financing costs	-	195,453
Increase (decrease) in cash attributable to changes in assets and liabilities:		
Tenant security deposits, net	(86,720)	(51,938)
Prepaid expenses and other assets	(733,252)	2,409,482
Due to/from affiliates	(173,797)	22,877
Accrued expenses and other liabilities	(827,934)	(1,838,665)
Net cash provided by operating activities	4,518,540	9,478,707

Cash flows from investing activities:

Capital improvements	(11,275,233)	(19,155,849)
Acquisition of multifamily apartment communities	(849,719)	-
Acquisition of real estate limited partnership interests	-	(20,148,140)
Proceeds from sale of properties	-	41,643,556
Interest earned on replacement reserve deposits	(22,499)	(62,034)
Restricted cash	(12,621,013)	-
Deposits to replacement reserve escrow	(343,164)	(579,572)
Withdrawals from replacement reserve escrow	3,463,158	3,289,647
Investment in Multifamily Venture Limited Partnership	-	(700,075)
Investment in Mezzanine Loan Limited Liability Company	-	(855,000)
Net cash (used in) provided by investing activities	(21,648,470)	3,432,533

Cash flows from financing activities:

Borrowings from mortgage notes payable	10,501,605	-
Principal payments on mortgage notes payable	(2,348,914)	(11,685,713)
Prepayments of mortgage notes payable	-	(6,433,293)
Borrowings from revolving credit facility – affiliate	-	15,000,000
Principal payments on revolving credit facility – affiliate	-	(5,000,000)
Good faith deposits on mortgage notes payable	-	341,250
Deferred financing costs	(251,005)	(685,353)
Contribution from noncontrolling interest holders	1,404,801	-

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Distributions to noncontrolling interest in properties	(717,694)	(598,302)
Distributions on common operating partnership units	-	(13,000,000)
Distributions to preferred shareholders	(5,025,589)	(5,025,539)
Net cash provided by (used in) financing activities	3,563,204	(27,086,950)
Net decrease in cash and cash equivalents	(13,566,726)	(14,175,710)
Cash and cash equivalents at beginning of period	24,227,615	22,479,937
Cash and cash equivalents at end of period	\$ 10,660,889	\$ 8,304,227
Supplemental disclosure:		
Cash paid for interest, net of amount capitalized	\$ 19,359,311	\$ 20,790,026

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

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

For the nine months ended
September 30,
2009 2008

Supplemental disclosure (continued):

Supplemental disclosure of non-cash investing and financing activities:

Capital improvements included in accrued expenses and other liabilities	\$41,775	\$768,852
Dividends declared and payable to preferred shareholders	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	-	31,377,606
Write-off of real estate assets – storm damage	278,988	1,040,898
Insurance proceeds receivable – storm damage	808,814	1,040,898
Acquisition of multifamily apartment communities:		
Assets purchased:		
Multifamily apartment communities	\$(41,602,373)	\$(50,205,199)
Acquired in-place leases	(607,893)	(662,187)
Prepaid expenses and other assets	(1,083,422)	(640,758)
Liabilities assumed:		
Accrued expenses	80,760	293,134
Tenant security deposit liability	159,936	401,496
Mortgage assumed	42,203,273	30,665,374
Net cash used for acquisition of multifamily apartment communities	\$(849,719)	\$(20,148,140)

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

BERKSHIRE INCOME REALTY, INC
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

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. As of September 30, 2009, the Company owned, or had an interest in, 26 multifamily apartment communities consisting of a total 6,781 apartment units.

Discussion of acquisitions for the nine months ended September 30, 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. The Company has committed \$12.21 million 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 September 30, 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.

Under the terms of the limited liability company agreement governing JV BIR/Holland, BIR Glo owns a 90% interest and Holland Glo owns a 10% interest in JV BIR/Holland. Affiliates of Holland Glo are entitled to perform property management services and receive fees in payment thereof. The Company evaluated its investment in JV BIR/Holland and concluded that the investment was not a Variable Interest Entity under ASC 810-10-05 and therefore accounts for the investment under ASC 810-10-50 based on its controlling interest in the venture.

Because the sellers equity had been reduced to zero as a result of the agreed to valuation of the real estate, there was no transfer of consideration for the acquisition.

ASC 805-10-05, as defined below, 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

Discussion of dispositions for the nine months ended September 30, 2009

The Company did not dispose of any properties during the nine month period ended September 30, 2009.

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 805-10-05, which is intended to improve reporting by creating greater consistency in the accounting and financial reporting of business combinations. ASC 805-10-05 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 805-10-05 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 815-10-15, which amends and expands the disclosure requirements of ASC 815-10-05 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 815-10-05 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 815-10-15 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 815-10-05, 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 815-10-15 and determined that that the adoption of ASC 815-10-15 did not have a material impact on the financial position or operating results of the Company.

Effective January 1, 2009, the Company adopted ASC 810-10-65, which establishes and expands accounting and reporting standards for minority 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 minority interests in properties and minority 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 810-10-65, previously reported minority 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 810-10-65, the Company allocated losses to the noncontrolling interest in Operating Partnership of \$27,230,771, which represents their share of losses. Historically, these losses were allocated to the common shareholders.

In April 2009, the FASB issued ASC 820-10-65, which provides additional guidance for estimating fair value in accordance with ASC 820-10-05, when the volume and level of activity for the asset or liability have significantly decreased and for identifying transactions that are not orderly. ASC 820-10-65 is effective for interim and annual reporting periods ending after June 15, 2009. The Company elected early adoption of ASC 820-10-65 as of January 1, 2009. The Company has assessed the impact of ASC 820-10-65 and has determined that the adoption of ASC 820-10-65 did not have a material impact on the financial position or operating results of the Company.

In April 2009, the FASB issued ASC 825-10-65 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 825-10-65, which did not have a material impact on the financial position or operating results of the Company.

In May 2009, the FASB issued ASC 855-10-05 which is intended to establish general standards of accounting for disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. It requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for selecting that date, that is, whether that date represents the date the financial statements were issued or were available to be issued. ASC 855-10-05 is effective for interim periods ending after June 15, 2009. The Company's adoption of ASC 855-10-05 did not have a material impact on its financial position and results of operations.

In June 2009, the FASB issued Statement of Financial Accounting Standards No. 167 (“SFAS No. 167”), which is intended to improve financial reporting by enterprises involved with variable interest entities by replacing the quantitative-based risk and rewards calculation of determining which enterprise, if any, has a controlling financial interest in a variable interest entity with a primarily qualitative-based approach. This statement is effective for fiscal years beginning on or after November 15, 2009. Early application of SFAS No. 167 is prohibited. The Company is currently assessing the potential impact that the adoption of SFAS No. 167 may have on its financial position, results of operations or disclosure in its financial statements.

Unaudited interim consolidated financial statements

The accompanying interim consolidated financial statements of the Company are unaudited; however, the consolidated financial statements have been prepared in accordance with GAAP for interim financial information and in conjunction with the rules and regulations of the Securities and Exchange Commission (the “SEC”). Accordingly, certain disclosures accompanying annual financial statements prepared in accordance with GAAP are omitted. In the opinion of management, all adjustments (consisting solely of normal recurring matters) necessary for a fair statement for the interim periods have been included. The results of operations for the interim periods are not necessarily indicative of the results to be obtained for other interim periods or for the full fiscal year. The interim financial statements and notes thereto should be read in conjunction with the Company’s financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2008.

Consolidated statements of Comprehensive Income (Loss)

For the nine months ended September 30, 2009 and 2008, 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.

Reclassifications

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

2. MULTIFAMILY APARTMENT COMMUNITIES

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

	September 30, 2009	December 31, 2008
Land	\$ 67,711,675	\$ 56,100,766
Buildings, improvement and personal property	539,909,873	499,580,270
Multifamily apartment communities	607,621,548	555,681,036
Accumulated depreciation	(160,666,556)	(136,678,464)
Multifamily apartment communities, net	\$ 446,954,992	\$ 419,002,572

The Company accounts for its acquisitions of investments in real estate in accordance with ASC 805-10-05, 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 360-10-05. The Company did not record an impairment adjustment at September 30, 2009.

Discontinued Operations

On April 28, 2008 and May 29, 2008, the Operating Partnership completed the sale of 100% of the fee simple interest of the St. Marin/Karrington (“St. Marin”) and Berkshire at Westchase (“Westchase”) properties, respectively. The assets and liabilities related to the sale of the properties were removed from the accounts of the Company pursuant to the recording of the sale of the properties.

On October 29, 2008, the Operating Partnership completed the sale of 100% of its interest in Century Apartments (“Century”) in Cockeysville, Maryland. The assets and liabilities related to the sale of the property were removed from the accounts of the Company pursuant to the recording of the sale of the property.

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 assets and liabilities related to the sale of the property were removed from the accounts of the Company pursuant to the recording of the sale of the property.

The results of operations for the St. Marin, Westchase, Century and Westchester West properties have been restated and are presented as results from discontinued operations in the statement of operations for the three and nine months ended September 30, 2009 and 2008, respectively, pursuant to ASC 360-10-05.

The operating results of discontinued operations for the three and nine months ended September 30, 2009 and 2008 are presented in the following table.

	Three months ended September 30,		Nine months ended September 30,	
	2009	2008	2009	2008
Revenue:				
Rental	\$-	\$2,621,944	\$469	\$10,553,035
Interest	-	494	-	5,081
Utility reimbursement	-	66,951	-	291,567
Other	10,412	130,129	10,412	436,359
Total revenue	10,412	2,819,518	10,881	11,286,042
Expenses:				
Operating	8,222	505,218	59,673	2,409,446
Maintenance	93	316,839	42,207	915,981
Real estate taxes	-	209,658	-	1,208,142
General and administrative	-	36,629	69,451	308,014

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Management fees	-	110,089	4	440,224
Depreciation	-	841,887	-	3,561,906
Loss on early extinguishment of debt	-	-	-	819,914
Interest	-	913,622	-	3,379,468
Total expenses	8,315	2,933,942	171,335	13,043,095
Income (loss) from discontinued operations	\$2,097	\$(114,424)	\$(160,454)	\$(1,757,053)

3. INVESTMENT IN MULTIFAMILY VENTURE LIMITED PARTNERSHIP

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 managing partner of BVF is an affiliate of the Company. The Company has evaluated its investment in BVF and has concluded that its investment in BVF is a Variable Interest Entity and subject to the requirements of ASC 810-10-05. The Company is not required 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 810-10-05.

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 325-20-05, and is necessary in order for the Company to consistently meet its regulatory filing deadlines. As of September 30, 2009 and December 31, 2008, the Company has accounted for its share of the equity in BVF operating activity through June 30, 2009 and September 30, 2008, respectively.

As of September 30, 2009, the Company has invested 100% of its total committed capital amount of \$23,400,000 in BVF for an ownership interest of approximately 7%.

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

	June 30, 2009 (unaudited)	September 30, 2008 (unaudited)
ASSETS		
Multifamily apartment communities, net	\$1,176,375,257	\$1,209,859,485
Cash and cash equivalents	23,552,464	10,135,705
Other assets	25,232,179	28,524,544
Total assets	\$1,225,159,900	\$1,248,519,734
LIABILITIES AND PARTNERS’ CAPITAL		
Mortgage notes payable	\$972,766,462	\$939,696,802
Revolving credit facility	38,400,000	61,900,000
Other liabilities	19,809,346	24,103,571
Noncontrolling interest	29,009,507	34,363,160
Partners’ capital	165,174,585	188,456,201
Total liabilities and partners’ capital	\$1,225,159,900	\$1,248,519,734
Company’s share of partners’ capital	\$11,563,453	\$13,193,341
Basis differential (1)	604,396	2,232,069
Carrying value of the Company’s investment in Multifamily Venture Limited Partnership	\$12,167,849	\$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 September 30, 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 third quarter of 2009 and fourth quarter of 2008, respectively. Additionally, \$583,240 represents the Company's share of syndication costs incurred by BVF that 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 fair values below the carrying values has occurred and such decline is other-than-temporary. No such impairment charges have been recognized as of September 30, 2009.

The summarized statement of operations of BVF for the three and nine months ended June 30, 2009 and 2008 is as follows:

Three months ended		Nine months ended		
June 30,		June 30,		
2009	2008	2009	2008	
Revenue	\$36,644,790	\$34,974,846	\$108,662,185	\$97,489,967