

BERKSHIRE INCOME REALTY, INC.

Form 10-Q

November 14, 2013

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

For the quarterly period ended September 30, 2013

or

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

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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

Smaller Reporting Company

(Do not check if a 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, 2013.

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BERKSHIRE INCOME REALTY, INC.

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## Part I FINANCIAL INFORMATION

## Item 1. CONSOLIDATED FINANCIAL STATEMENTS

BERKSHIRE INCOME REALTY, INC.  
CONSOLIDATED BALANCE SHEETS

	September 30, 2013 (unaudited)	December 31, 2012 (audited)
<b>ASSETS</b>		
Multifamily apartment communities, net of accumulated depreciation of \$235,968,144 and \$235,825,752, respectively	\$379,127,145	\$402,999,104
Cash and cash equivalents	9,312,414	12,224,361
Cash restricted for tenant security deposits	1,267,396	1,332,178
Replacement reserve escrow	1,086,540	986,790
Prepaid expenses and other assets	8,275,848	9,545,966
Investments in unconsolidated multifamily entities	14,655,404	16,873,924
Acquired in-place leases and tenant relationships, net of accumulated amortization of \$0 and \$599,702, respectively	—	5,377
Deferred expenses, net of accumulated amortization of \$3,252,650 and \$3,096,284, respectively	2,838,489	3,210,510
Total assets	\$416,563,236	\$447,178,210
<b>LIABILITIES AND DEFICIT</b>		
Liabilities:		
Mortgage notes payable	\$461,726,623	\$478,185,998
Note payable - other	1,250,000	1,250,000
Due to affiliates, net	2,051,898	3,446,460
Due to affiliate, incentive advisory fees	7,592,536	6,634,261
Dividend and distributions payable	3,637,607	1,137,607
Accrued expenses and other liabilities	9,882,792	15,081,550
Tenant security deposits	1,549,398	1,475,298
Total liabilities	487,690,854	507,211,174
Commitments and contingencies (Note 9)	—	—
Deficit:		
Noncontrolling interest in properties	1,046,067	1,527,431
Noncontrolling interest in Operating Partnership (Note 10)	(100,096,200)	(89,708,267)
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, 2013 and December 31, 2012, respectively		70,210,830
Class A common stock, \$.01 par value, 5,000,000 shares authorized, 0 shares issued and outstanding at September 30, 2013 and December 31, 2012, respectively	—	—
Class B common stock, \$.01 par value, 5,000,000 shares authorized, 1,406,196 shares issued and outstanding at September 30, 2013 and December 31, 2012, 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, 2013 and December 31, 2012, respectively	—	—
Accumulated deficit	(42,302,377	) (42,077,020 )
Total deficit	(71,127,618	) (60,032,964 )
Total liabilities and deficit	\$416,563,236	\$447,178,210

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

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

	Three months ended		Nine months ended	
	September 30, 2013	2012	September 30, 2013	2012
Revenue:				
Rental	\$ 18,468,549	\$ 17,303,581	\$ 54,397,584	\$ 51,217,005
Utility reimbursement	866,346	722,752	2,556,845	2,176,382
Other	867,340	768,984	2,518,973	2,285,058
Total revenue	20,202,235	18,795,317	59,473,402	55,678,445
Expenses:				
Operating	4,587,613	4,473,126	13,662,836	13,034,206
Maintenance	1,384,633	1,321,345	3,497,705	3,556,043
Real estate taxes	1,770,935	1,694,010	5,606,147	5,119,712
General and administrative	505,702	554,381	1,743,601	1,878,723
Management fees	1,208,938	1,170,760	3,605,724	3,458,423
Incentive advisory fees	423,153	173,217	1,796,933	1,973,195
Depreciation	6,397,609	5,984,472	19,157,233	18,483,621
Interest, inclusive of amortization of deferred financing fees	6,784,545	5,680,646	19,841,847	17,986,913
Amortization of acquired in-place leases and tenant relationships	—	16,104	5,377	52,176
Total expenses	23,063,128	21,068,061	68,917,403	65,543,012
Loss before equity in loss of unconsolidated multifamily entities	(2,860,893 )	(2,272,744 )	(9,444,001 )	(9,864,567 )
Equity in loss of unconsolidated multifamily entities	(24,499 )	(653,110 )	(1,655,602 )	(245,871 )
Loss from continuing operations	(2,885,392 )	(2,925,854 )	(11,099,603 )	(10,110,438 )
Discontinued operations:				
Income (loss) from discontinued operations	(12,444 )	223,502	47,336	(484,772 )
Gain on disposition of real estate assets	—	—	18,689,058	6,622,210
Net income (loss) from discontinued operations	(12,444 )	223,502	18,736,394	6,137,438
Net income (loss)	(2,897,836 )	(2,702,352 )	7,636,791	(3,973,000 )
Net income attributable to noncontrolling interest in properties	(25,553 )	(127,684 )	(40,361 )	(345,990 )
Net (income) loss attributable to noncontrolling interest in Operating Partnership (Note 10)	4,488,677	4,397,555	(2,509,405 )	9,121,238
Net income attributable to the Company	1,565,288	1,567,519	5,087,025	4,802,248
Preferred dividend	(1,675,194 )	(1,675,194 )	(5,025,582 )	(5,025,583 )
Net income (loss) available to common shareholders	\$(109,906 )	\$(107,675 )	\$ 61,443	\$(223,335 )
Net loss from continuing operations attributable to the Company per common share, basic and diluted	\$(0.07 )	\$(0.24 )	\$(13.28 )	\$(4.52 )
Net income (loss) from discontinued operations attributable to the Company per common share, basic and diluted	\$(0.01 )	\$ 0.16	\$ 13.32	\$ 4.36
Net income (loss) available to common shareholders per common share, basic and diluted	\$(0.08 )	\$(0.08 )	\$ 0.04	\$(0.16 )
Weighted average number of common shares outstanding, basic and diluted	1,406,196	1,406,196	1,406,196	1,406,196

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

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BERKSHIRE INCOME REALTY, INC.  
CONSOLIDATED STATEMENTS OF CHANGES IN DEFICIT  
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2013 AND 2012  
(unaudited)

	Company Shareholders				Accumulated Deficit	Noncontrolling Interests – Properties	Noncontrolling Interests – Operating Partnership	Total Deficit
	Series A Preferred Stock		Class B Common Stock					
	Shares	Amount	Shares	Amount				
Balance at January 1, 2012	2,978,110	\$70,210,830	1,406,196	\$14,062	\$(41,802,722)	\$346,524	\$(76,785,818)	\$(48,017,124)
Net income (loss)	—	—	—	—	4,802,248	345,990	(9,121,238)	(3,973,000)
Contributions	—	—	—	—	—	291,701	—	291,701
Distributions	—	—	—	—	—	(1,295,182)	(1,685,796)	(2,980,978)
Distributions to preferred shareholders	—	—	—	—	(5,025,583)	—	—	(5,025,583)
Balance at September 30, 2012	2,978,110	\$70,210,830	1,406,196	\$14,062	\$(42,026,057)	\$(310,967)	\$(87,592,852)	\$(59,704,984)

	Company Shareholders				Accumulated Deficit	Noncontrolling Interests – Properties	Noncontrolling Interests – Operating Partnership	Total Deficit
	Series A Preferred Stock		Class B Common Stock					
	Shares	Amount	Shares	Amount				
Balance at January 1, 2013	2,978,110	\$70,210,830	1,406,196	\$14,062	\$(42,077,020)	\$1,527,431	\$(89,708,267)	\$(60,032,964)
Net income	—	—	—	—	5,087,025	40,361	2,509,405	7,636,791
Contributions	—	—	—	—	—	399,718	—	399,718
Distributions	—	—	—	—	(286,800)	(921,443)	(12,897,338)	(14,105,581)
Distributions to preferred shareholders	—	—	—	—	(5,025,582)	—	—	(5,025,582)
Balance at September 30, 2013	2,978,110	\$70,210,830	1,406,196	\$14,062	\$(42,302,377)	\$1,046,067	\$(100,096,200)	\$(71,127,618)

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

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

	For the nine months ended September 30,	
	2013	2012
Cash flows from operating activities:		
Net income (loss)	\$7,636,791	\$(3,973,000 )
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Amortization of deferred financing costs	433,159	448,287
Amortization of acquired in-place leases and tenant relationships	5,377	52,176
Loss on extinguishment of debt	3,807	40,812
Depreciation	19,762,355	20,993,891
Equity in loss of unconsolidated multifamily entities	1,655,602	245,871
Gain on disposition of real estate assets	(18,689,058 )	(6,622,210 )
Increase (decrease) in cash attributable to changes in assets and liabilities:		
Tenant security deposits, net	138,882	127,615
Prepaid expenses and other assets	1,270,118	1,422,614
Due to/from affiliates	(1,394,562 )	1,534,662
Due to affiliate - incentive advisory fees	958,275	1,590,076
Accrued expenses and other liabilities	(1,053,427 )	1,220,523
Net cash provided by operating activities	10,727,319	17,081,317
Cash flows from investing activities:		
Capital improvements	(12,308,567 )	(33,065,794 )
Proceeds from sale of multifamily apartment communities	30,958,927	13,929,990
Investments in unconsolidated multifamily entities	(305,175 )	(581,030 )
Distributions from investment in unconsolidated multifamily entities	868,093	700,075
Interest earned on replacement reserve deposits	(446 )	(2,219 )
Deposits to replacement reserve escrow	(140,785 )	(131,985 )
Withdrawal from replacement reserve escrow	41,481	—
Net cash provided by (used in) investing activities	19,113,528	(19,150,963 )
Cash flows from financing activities:		
Borrowings from mortgage notes payable	2,770,663	22,645,466
Principal payments on mortgage notes payable	(4,396,752 )	(4,047,055 )
Prepayments of mortgage notes payable	(14,833,286 )	(5,506,728 )
Borrowings from revolving credit facility - affiliate	1,627,000	1,691,000
Principal payments on revolving credit facility - affiliate	(1,627,000 )	(7,349,422 )
Deferred financing costs	(61,974 )	(226,989 )
Contributions from noncontrolling interest holders in properties	399,718	291,701
Distributions to noncontrolling interest holders in properties	(1,221,443 )	(1,295,182 )
Distributions to noncontrolling interest partners in Operating Partnership	(10,164,258 )	(1,685,796 )
Distributions to common shareholders	(219,880 )	—
Distributions to preferred shareholders	(5,025,582 )	(5,025,583 )
Net cash used in financing activities	(32,752,794 )	(508,588 )

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Net decrease in cash and cash equivalents	(2,911,947	) (2,578,234	)
Cash and cash equivalents at beginning of period	12,224,361	9,645,420	
Cash and cash equivalents at end of period	\$9,312,414	\$7,067,186	

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

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

	For the nine months ended September 30,	
	2013	2012
Supplemental disclosure:		
Cash paid for interest, net of capitalized interest	\$20,622,669	\$19,434,715
Capitalization of interest	425,271	1,814,313
Supplemental disclosure of non-cash investing and financing activities:		
Capital improvements included in accrued expenses and other liabilities	120,308	2,465,914
Dividends declared and payable to preferred shareholders	837,607	837,607
Dividends declared and payable to common stockholders	66,920	—
Distributions payable	2,733,080	—
Write-off of fully amortized acquired in-place leases and tenant relationships	605,079	—
Sale of real estate:		
Gross selling price	\$31,500,000	\$14,200,000
Cost of sale	(541,073	) (270,010
Cash flows from sale of multifamily apartment communities	\$30,958,927	\$13,929,990

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

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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, developing and rehabilitating multifamily apartment communities. As of September 30, 2013, the Company owned, or had an interest in, 20 multifamily apartment communities consisting of 5,499 total apartment units, one multifamily development project and two unconsolidated multifamily entities. The Company conducts its business through Berkshire Income Realty-OP, L.P. (the "Operating Partnership").

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 shareholders. 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 nine months ended September 30, 2013 and 2012, 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. The Company is subject to certain state level taxes based on the location of its properties.

Discussion of acquisitions for the nine months ended September 30, 2013

The Company did not acquire any properties during the nine-month period ended September 30, 2013.

Discussion of dispositions for the nine months ended September 30, 2013

On June 25, 2013, the Company completed the sale of Walden Pond and Gables of Texas, both located in Houston, Texas, to an unaffiliated buyer. The combined sale price was \$31,500,000 and was subject to normal operating prorations and adjustments as provided for in the purchase and sale agreement.

Recent Accounting Pronouncements

In May 2011, the Financial Accounting Standard Board ("FASB") issued Accounting Standards Update ("ASU") 2011-04, Fair Value Measurement (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs. ASU 2011-04 clarifies some existing concepts, eliminates wording differences between accounting principles generally accepted in the United States of America ("GAAP") and International Financial Reporting Standards ("IFRS"), and in some limited cases, changes some principles to achieve convergence between GAAP and IFRS. ASU 2011-04 results in a consistent definition of fair value and common requirements for measurement of and disclosure about fair value between GAAP and IFRS. ASU 2011-04 also expands the disclosures for fair value measurements that are estimated using significant unobservable (Level 3) inputs. ASU 2011-04 became effective for the Company on January 1, 2012. The adoption of ASU 2011-04 did not have a material effect on the Company's operating results, financial position, or disclosures.

In June 2011, the FASB issued ASU 2011-05, Presentation of Comprehensive Income, which requires an entity to present the total of comprehensive income, the components of net income, and the components of other

comprehensive income either in a single continuous statement of comprehensive income, or in two separate but consecutive statements. ASU 2011-05 eliminates the option to present components of other comprehensive income as part of the statement of equity. In December 2011, the FASB issued ASU 2011-12, Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in ASU 2011-05, which deferred the new requirement to present components of reclassifications of other comprehensive income on the face of the income statement. Both ASU 2011-05 and ASU 2011-12 became effective for the Company on January 1, 2012. The adoption of ASU 2011-05 and ASU 2011-12 did not have any effect on the Company's operating results, financial position, or disclosures.

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## 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, 2012.

## Consolidated Statements of Comprehensive Income (Loss)

For the nine months ended September 30, 2013 and 2012, 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.

## Out of period adjustments

During the third quarter of fiscal 2012, the Company recorded out of period adjustments that (i) decreased interest expense by an aggregate of \$341,368 to reflect additional capitalization of interest relating to the three month periods ended March 31, 2012 and June 30, 2012 of \$154,356 and \$187,012, respectively, and (ii) reduced incentive advisory fees expense by \$90,235 relating to an over accrual for such expenses during the three month period ended June 30, 2012. The cumulative effect of out of period adjustments for the year ended December 31, 2012 was a \$431,603 decrease in the net loss. The Company has determined that these adjustments did not have an impact on any other prior annual period and were not material to any other prior interim periods, and the resulting correction is not material.

Distributions of \$1,685,796 have been adjusted from Accumulated Deficit to Noncontrolling Interest-Operating Partnership to properly reflect such amounts within the Consolidated Statement of Changes in Deficit for the nine months ended September 30, 2012. Management has determined such adjustment to be immaterial to the overall financial statements.

## 2. MULTIFAMILY APARTMENT COMMUNITIES

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

	September 30, 2013	December 31, 2012
Land	\$60,871,969	\$63,749,991
Buildings, improvement and personal property	554,223,320	575,074,865
Multifamily apartment communities	615,095,289	638,824,856
Accumulated depreciation	(235,968,144	) (235,825,752
Multifamily apartment communities, net	\$379,127,145	\$402,999,104

The Company accounts for its acquisitions of investments in real estate in accordance with Accounting Standards Codification ("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 is determined based on the specific expiration dates of the in-place leases and amortized 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 during the nine months ended September 30, 2013 or twelve months ended December 31, 2012.



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## Discontinued Operations

On March 23, 2012, the Company completed the sale of Riverbirch, a 210-unit multifamily apartment community located in Charlotte, North Carolina, to an unaffiliated buyer. The sale price of Riverbirch was \$14,200,000 and was subject to normal operating prorrations and adjustments as provided for in the purchase and sale agreement.

On November 5, 2012, the Company completed the sale of Silver Hill and Arboretum, both located in Newport News, Virginia, to an unaffiliated buyer. The combined sale price was \$25,425,000 and was subject to normal operating prorrations and adjustments as provided for in the purchase and sale agreement.

On November 30, 2012, the Company completed the sale of Arrowhead and Moorings, both located in Chicago, Illinois, to an unaffiliated buyer. The combined total sale price was \$37,000,000 and was subject to normal operating prorrations and adjustments as provided for in the purchase and sale agreement.

On June 25, 2013, the Company completed the sale of Walden Pond and Gables of Texas, both located in Houston, Texas, to an unaffiliated buyer. The combined sale price was \$31,500,000 and was subject to normal operating prorrations and adjustments as provided for in the purchase and sale agreement.

The results of operations for Arboretum, Arrowhead, Gables of Texas, Moorings, Riverbirch, Silver Hill and Walden Pond have been restated and are presented as results from discontinued operations in the Consolidated Statement of Operations for the three and nine months ended September 30, 2013 and 2012, respectively, pursuant to ASC 205-20.

The operating results of discontinued operations for the three and nine months ended September 30, 2013 and 2012 are presented in the following table.

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Revenue:				
Rental	\$5,203	\$2,902,238	\$2,020,361	\$9,063,449
Utility reimbursement	—	157,046	230,542	473,964
Other	52,604	140,063	297,838	438,933
Total revenue	57,807	3,199,347	2,548,741	9,976,346
Expenses:				
Operating	37,440	937,408	810,822	3,053,481
Maintenance	7,697	266,331	136,819	719,375
Real estate taxes	23,097	292,105	288,619	1,009,645
General and administrative	—	17,394	31,663	37,529
Management fees	2,017	127,948	96,567	390,992
Depreciation	—	784,645	605,122	2,510,270
Interest, inclusive of amortization of deferred financing fees	—	550,014	527,986	2,699,013
Loss on extinguishment of debt	—	—	3,807	40,813
Total expenses	70,251	2,975,845	2,501,405	10,461,118
Income (loss) from discontinued operations	\$(12,444 )	\$223,502	\$47,336	\$(484,772 )

## 3. INVESTMENTS IN UNCONSOLIDATED MULTIFAMILY ENTITIES

INVESTMENT IN UNCONSOLIDATED 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 totaled \$23,400,000. BVF’s investment strategy was to acquire middle-market properties where there is an opportunity to add value through repositioning or rehabilitation.

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In accordance with ASC 810-10 issued by FASB, as amended by ASU 2009-17, related to the consolidation of variable interest entities, the Company has performed an analysis of its investment in BVF to determine whether it would qualify as a variable interest entity (“VIE”) and whether it should be consolidated or accounted for as an equity investment in an unconsolidated joint venture. As a result of the Company’s qualitative assessment to determine whether its investment in BVF is a VIE, the Company determined that the investment is a VIE based upon the fact that the holders of the equity investment at risk lack the power, through voting or similar rights, to direct the activities of BVF that most significantly impact BVF’s economic performance. Under the terms of the limited partnership agreement of BVF, the general partner of BVF has the full, exclusive and complete right, power, authority, discretion, obligation and responsibility to make all decisions affecting the business of BVF.

After making the determination that its investment in BVF was a VIE, the Company performed an assessment of which partner would be considered the primary beneficiary of BVF and therefore would be required to consolidate BVF’s balance sheets and result of operations. This assessment was based upon which entity (1) had the power to direct matters that most significantly impact the activities of BVF, and (2) had the obligation to absorb losses or the right to receive benefits of BVF that could potentially be significant to the entity based upon the terms of the partnership and management agreements of BVF. As a result of fees paid to an affiliate of the general partner of BVF for asset management and other services, the Company has determined that the general partner of BVF has the obligation to absorb the losses or the right to receive benefits of BVF while retaining the power to make significant decisions for BVF. Based upon this understanding, the Company concluded that the general partner of BVF should consolidate BVF and as such, the Company accounts for its investment in BVF as an equity investment in an unconsolidated joint venture.

As of September 30, 2013, the Company had invested 100% of its total committed capital amount of \$23,400,000 in BVF for an ownership interest of approximately 7% and had received distributions from BVF of \$2,268,243, or approximately 9.7%, of its committed capital. On October 8, 2013, the Company received \$1,715,183 of distribution from BVF for total distributions of \$3,983,426, or approximately 17%, of its committed capital.

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

	September 30, 2013 (unaudited)	December 31, 2012 (audited)
<b>ASSETS</b>		
Multifamily apartment communities, net	\$751,632,874	\$807,747,897
Cash and cash equivalents	17,657,099	16,851,009
Other assets	19,309,148	16,927,659
Total assets	\$788,599,121	\$841,526,565
<b>LIABILITIES AND PARTNERS’ CAPITAL</b>		
Mortgage notes payable	\$768,087,440	\$800,968,937
Revolving credit facility	16,300,000	16,300,000
Other liabilities	24,733,784	22,050,147
Noncontrolling interest	(13,302,467	) (9,478,084
Partners’ capital (deficit)	(7,219,636	) 11,685,565
Total liabilities and partners’ capital (deficit)	\$788,599,121	\$841,526,565
Company’s share of partners’ capital (deficit)	\$(505,428	) \$818,078
Basis differential (1)	604,395	604,395
Carrying value of the Company’s investment in unconsolidated limited partnership (2)	\$98,967	\$1,422,473

(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). At September 30, 2013 and December 31, 2012, the differential related mainly to \$583,240 which represents the Company's share of syndication costs incurred by BVF, which was not an item required to be funded via a capital investment by the Company.

(2) Per the partnership agreement of BVF, the Company's liability is limited to its investment in BVF. The Company does not guarantee any third-party debt held by BVF. The Company has fully funded its obligations under the partnership agreement as of September 30, 2013 and has no commitment to make additional contributions to BVF.

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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 other-than-temporary impairment charges have been recognized during the nine months ended September 30, 2013 or twelve months ended December 31, 2012.

The summarized statements of operations of BVF for the three and nine months ended September 30, 2013 and 2012 are as follows:

	Three months ended		Nine months ended	
	September 30,		September 30,	
	2013	2012	2013	2012
Revenue	\$34,116,230	\$32,825,227	\$101,002,262	\$101,162,295
Expenses	(42,051,265 )	(43,526,428 )	(125,568,161 )	(136,137,762 )
Gain on property sales and extinguishment of debt (2)	14,339,915	615,203	14,261,091	28,742,497
Noncontrolling interest	1,196,501	1,683,415	3,799,608	5,183,466
Net income (loss) attributable to investment	\$7,601,381	\$(8,402,583 )	\$(6,505,200 )	\$(1,049,504 )
Equity in income (loss) of unconsolidated limited partnership (1)(2)	\$532,154	\$(588,242 )	\$(455,413 )	\$(73,472 )

(1) There were no impairment indicators or impairment writeoffs in the nine months ended September 30, 2013 or 2012.

The Company has determined that its valuation of the real estate was categorized within Level 3 of the fair value hierarchy in accordance with ASC 820-10, as it utilized significant unobservable inputs in its assessment.

(2) During the nine months ended September 30, 2012, BVF recorded a net gain on the disposition of eight properties. The gain on the sale was \$28,742,497, of which the Company's share was approximately \$2,012,000 and is reflected in the "Equity in income (loss) of unconsolidated multifamily entities" for the nine months ended September 30, 2012.

During the nine months ended September 30, 2013, BVF recorded a net gain on the disposition of one property. The gain on the sale was \$14,261,091, of which the Company's share was approximately \$998,000 and is reflected in the "Equity in income (loss) of unconsolidated multifamily entities" for the nine months ended September 30, 2013.

#### INVESTMENT IN UNCONSOLIDATED LIMITED LIABILITY COMPANY

On March 2, 2011, the Operating Partnership executed an agreement with Berkshire Multifamily Value Fund II ("BVF-II"), an affiliated entity, to create a joint venture, BIR/BVF-II NoMa JV, L.L.C. ("NoMa JV"), to participate in and take an ownership position in a real estate development project. BVF-II is the managing member of NoMa JV and has a percentage ownership interest of approximately 67% while the Operating Partnership has a percentage ownership interest of approximately 33%.

Also on March 2, 2011, NoMa JV acquired a 90% interest in NOMA Residential West I, LLC. ("NOMA Residential"). NOMA Residential has developed and is operating a 603-unit multifamily apartment community in Washington, D.C. (the "NoMa Project"). The remaining 10% interest in NOMA Residential is owned by the developer, an unrelated third party (the "NoMa Developer"). The governing agreements for NOMA Residential give the NoMa Developer the authority to manage the construction and development of, and subsequent to completion, the day-to-day

operations of NOMA Residential. The agreement also provides for fees to the NoMa Developer, limits the authority of the NoMa Developer and provides for distributions based on percentage interest and thereafter in accordance with achievement of economic hurdles.

In accordance with ASC 810-10, as amended by ASU 2009-17, related to the consolidation of variable interest entities, the Company has performed an analysis of its investment in NoMa JV to determine whether it would qualify as a VIE and whether it should be consolidated or accounted for as an equity investment in an unconsolidated joint venture. As a result of the Company's qualitative assessment to determine whether its investment is a VIE, the Company determined that the investment is a VIE based upon the holders of the equity investment at risk lacking the power, through voting rights or similar rights to direct the activities of the entity that most significantly impact the entity's economic performance. Under the terms of the limited liability company agreement of NoMa JV, the managing member has the full, exclusive and complete right, power, authority, discretion, obligation and responsibility to make all decisions affecting the business of NoMa JV.

After making the determination that its investment in NoMa JV was a VIE, the Company performed an assessment of which partner would be considered the primary beneficiary of NoMa JV and would be required to consolidate the VIE's balance sheet

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and results of operations. This assessment was based upon which entity (1) had the power to direct matters that most significantly impact the activities of NoMa JV, and (2) had the obligation to absorb losses or the right to receive benefits of NoMa JV that could potentially be significant to the VIE based upon the terms of the partnership and management agreements of NoMa JV. Because the managing member owns two-thirds of the entity and all profits and losses are split pro-rata in accordance with capital accounts, the Company has determined that the managing member has the obligation to absorb the losses or the right to receive benefits of the VIE while retaining the power to make significant decisions for NoMa JV. Based upon this understanding, the Company concluded that the managing member should consolidate NoMa JV and as such, the Company accounts for its investment in NoMa JV as an equity investment in an unconsolidated joint venture.

As of September 30, 2013, the Company had invested 100% of its total committed capital amount of \$14,520,000 in NoMa JV for an ownership interest of approximately 33% and had recorded \$1,710,327 of capitalized interest on the investment. The Company's maximum exposure to loss in NoMa JV is its investment of capital of \$14,520,000.

The summarized statement of assets, liabilities and members' capital of NoMa JV is as follows:

	September 30, 2013 (unaudited)	December 31, 2012 (audited)
<b>ASSETS</b>		
Multifamily apartment communities, net	\$ 127,434,358	\$ 114,349,590
Cash and cash equivalents	1,071,560	565,453
Other assets	631,377	738,983
Total assets	\$ 129,137,295	\$ 115,654,026
<b>LIABILITIES AND MEMBERS' CAPITAL</b>		
Mortgage note payable	\$ 79,632,107	\$ 63,413,844
Other liabilities	6,597,332	5,419,184
Noncontrolling interest	4,290,786	4,682,100
Members' capital	38,617,070	42,138,898
Total liabilities and members' capital	\$ 129,137,295	\$ 115,654,026
Company's share of members' capital	\$ 12,872,356	\$ 14,046,299
Basis differential (1)	\$ 1,684,081	\$ 1,405,152
Carrying value of the Company's investment in unconsolidated limited liability company (2)	\$ 14,556,437	\$ 15,451,451

(1) This amount represents capitalized interest, net of amortization, pursuant to ASC 835-20, related to the Company's equity investment in NoMa JV. The capitalized interest was computed on the amounts borrowed by the Company to finance its investment in NoMa JV and was not an item required to be funded via a capital investment in NoMa JV.

(2) Per the limited liability company agreement of NoMa JV, the Company's liability is limited to its investment in NoMa JV. The Company has fully funded its maximum obligation under the limited liability company agreement as of September 30, 2013 and has no commitment to make additional contributions to NoMa JV.

The Company evaluates the carrying value of its investment in NoMa JV 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 other-than-temporary impairment

charges have been recognized during the nine months ended September 30, 2013 or twelve months ended December 31, 2012.



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The summarized statements of operations of NoMa JV for the three and nine months ended September 30, 2013 and 2012 are as follows:

	Three months ended		Nine months ended	
	September 30, 2013	2012	September 30, 2013	2012
Revenue	\$1,522,546	\$1,556	\$2,804,862	\$1,556
Expenses	(3,290,569 )	(217,783 )	(6,718,005 )	(576,220 )
Noncontrolling interest	176,802	21,622	391,314	57,466
Net loss attributable to investment	\$(1,591,221 )	\$(194,605 )	\$(3,521,829 )	\$(517,198 )
Equity in loss of unconsolidated limited liability company	\$(530,407 )	\$(64,868 )	\$(1,173,943 )	\$(172,399 )
Amortization of basis	(26,246 )	—	(26,246 )	—
Adjusted equity in loss of unconsolidated limited liability company	\$(556,653 )	\$(64,868 )	\$(1,200,189 )	\$(172,399 )

#### 4. MORTGAGE NOTES PAYABLE

On March 31, 2011, the Operating Partnership, through the joint venture ("JV 2020 Lawrence") formed with its subsidiary, BIR 2020 Lawrence, L.L.C. ("BIR 2020"), Zocalo Community Development, Inc. ("Zocalo") and JB 2020, LLC, entered into an agreement for fixed rate construction-to-permanent financing totaling up to \$45,463,100, which is collateralized by the related property and is insured by the U.S. Department of Housing and Urban Development ("HUD"). The construction loan was converted to permanent financing on June 27, 2013 with a term of 40 years and has a fixed interest rate of 5.00%. The loan will mature on February 1, 2053. The proceeds of the financing were used to develop a mid-rise multifamily apartment building in Denver, Colorado (the "2020 Lawrence Project"). As of September 30, 2013, the Company received proceeds pursuant to the loan of \$45,463,100, of which \$2,770,663 was received during the nine months ended September 30, 2013. As of September 30, 2013, the outstanding balance on the loan was \$45,221,260.

The Company determines the fair value of the mortgage notes payable in accordance with authoritative guidance related to fair value measurement and is based on the discounted future cash flows at a discount rate that approximates the Company's current effective borrowing rate for comparable loans (other observable inputs or Level 3 inputs, as defined by the authoritative guidance). 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 is appropriate in the valuation model. Debt in excess of 80% loan-to-value is considered similar to mezzanine debt and is valued using a greater interest spread than the average debt pool. Based on this analysis, the Company has determined that the fair value of the mortgage notes payable approximated \$490,725,000 and \$543,557,000 at September 30, 2013 and December 31, 2012, respectively.

#### 5. 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 credit facility was amended on May 31, 2007 to add additional terms to the credit facility ("Amendment No. 1"), on February 17, 2011 to add an amendment period with a temporary increase in the commitment amount to \$40,000,000 ("Amendment No. 2"), and on May 24, 2011 to increase the commitment fee ("Amendment No. 3"). The credit 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 credit facility and various operational and financial covenants, including a maximum leverage ratio and a maximum debt service ratio. The agreement had 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 credit facility were agreed upon through negotiations and were approved by 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 MKT LLC) ("Audit Committee"). Subsequent to its exercise of extension rights, the Company on May 31, 2007 executed Amendment No.1 that provides for an extension of the maturity date by replacing the then 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. Amendment No. 1 also added 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 for the current 365-day period was satisfied on July 9, 2013.

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On February 17, 2011, the Company executed Amendment No. 2 which provides for a temporary modification of certain provisions of the credit facility during a period commencing with the date of execution and ending on July 31, 2012 (the "Amendment Period"), subject to extension. During the Amendment Period, certain provisions of the facility were modified and included: an increase in the amount of the commitment from \$20,000,000 to \$40,000,000; elimination of the leverage ratio covenant and clean-up requirement (each as defined in the revolving credit facility agreement); and computation and payment of interest on a quarterly basis. At the conclusion of the Amendment Period, including extensions, the provisions modified pursuant to Amendment No. 2 reverted back to the provisions of the revolving credit facility agreement prior to the Amendment Period.

On May 24, 2011, the Company executed Amendment No. 3 which limits the total commitment fee provided for in the agreement to be no greater than \$400,000 in the aggregate.

On July 31, 2012, the provisions of the Amendment Period, as described above, expired as the Company did not exercise the extension provision to the Amendment Period of the revolving credit facility, as provided for in Amendment No. 2. As a result, the specific provisions, which had been modified pursuant to Amendment No. 2, reverted back to the original provisions of the revolving credit facility agreement prior to the Amendment Period.

During the nine months ended September 30, 2013 and 2012, the Company borrowed \$1,627,000 and \$1,691,000, respectively, under the revolving credit facility and repaid \$1,627,000 and \$7,349,422 of advances, respectively, during the same periods. The Company incurred interest charges of \$32,981 and \$146,653 related to the credit facility during the nine months ended September 30, 2013 and 2012, respectively. The Company did not pay any commitment fees during the nine months ended September 30, 2013 or 2012. There was no outstanding balance under the credit facility as of September 30, 2013 and December 31, 2012.

The Company determines the fair value of the revolving credit facility in accordance with authoritative guidance related to fair value measurement. The Company has determined that as a result of the 60-day termination notice provision of the revolving credit facility that requires payment of all outstanding balances upon notification by the lender (other observable inputs or Level 3 inputs, as defined by the authoritative guidance), that the fair value of the revolving credit facility approximated the outstanding principal balance of the revolving credit facility at September 30, 2013 and December 31, 2012.

6. NOTE PAYABLE - OTHER

On June 12, 2012, Zocalo, the managing member of JV 2020 Lawrence, entered into a financing agreement with the State of Colorado, through the Colorado Energy Office, for \$1,250,000 (the "Colorado Energy Loan") to be used for inclusion of energy efficient components in the construction of the 2020 Lawrence Project. The Colorado Energy Loan has a term of 10 years and an interest rate of 5% per annum. The Colorado Energy Loan will mature on June 11, 2022. Zocalo has pledged all of its membership interests, both currently owned and subsequently acquired, in JV 2020 Lawrence as collateral for the Colorado Energy Loan. Pursuant to an authorizing resolution adopted by the members of JV 2020 Lawrence, Zocalo advanced the proceeds of the Colorado Energy Loan, as received from time to time, to JV 2020 Lawrence for application to the 2020 Lawrence Project. Such advances to JV 2020 Lawrence will not be considered contributions of capital to JV 2020 Lawrence. Also, Zocalo is authorized and directed to cause JV 2020 Lawrence to repay such advances, including principal and interest, made by Zocalo at such times as required by the Colorado Energy Loan. Any payments pursuant to the authorizing resolution shall be payable only from surplus cash of the 2020 Lawrence Project as defined by HUD in the governing regulatory agreement of the primary financing on the project as described above. If surplus cash is not available to satisfy Zocalo's payment obligations under the Colorado Energy Loan, then either Zocalo or BIR 2020 may issue a funding notice, pursuant to the JV 2020 Lawrence limited liability company agreement, for payment obligation amounts due and payable. As of September 30, 2013 and December 31, 2012, the outstanding balance on the Colorado Energy Loan was \$1,250,000.

Based on the fair value analysis using the same method as described in Note 4 - Mortgage Notes Payable, the Company has determined that the fair value of the "Note payable - other" approximated \$1,328,000 and \$1,357,000 at September 30, 2013 and December 31, 2012, respectively.

#### 7. EQUITY / DEFICIT

On March 25, 2003, the Board of Directors ("Board") declared a dividend at an annual rate of 9%, on the stated liquidation preference of \$25 per share of the outstanding 9% Series A Cumulative Redeemable Preferred Stock ("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 nine months ended September 30, 2013 and 2012, the Company's aggregate dividends on the Preferred Shares totaled \$5,025,582 and \$5,025,583, respectively, of which \$837,607 was payable and included

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on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012, respectively.

During the nine months ended September 30, 2013 and 2012, the Company made tax payments of \$300,000 and \$0, respectively, on behalf of the noncontrolling interest holders in properties as required by the taxing authorities of the jurisdictions in which the Company owns and operates properties, of which \$0 and \$300,000 was payable and included on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012, respectively.

During the nine months ended September 30, 2013 and 2012, the Company made tax payments of \$1,184,138 and \$1,685,796, respectively, on behalf of the noncontrolling interest partners in Operating Partnership as required by the taxing authorities of the jurisdictions in which the Company owns and operates properties. The payments were treated as distributions attributable to the noncontrolling interest in Operating Partnership and are reflected in the Consolidated Statements of Changes in Deficit.

During the nine months ended September 30, 2012, the Board did not authorize the general partner of the Operating Partnership to distribute any quarterly distributions to the common general and common limited partners or a common dividend on the Company's Class B common stock.

On August 6, 2013, the Board authorized the general partner of the Operating Partnership to make a special distribution of \$12,000,000 from the proceeds of the sale of Walden Pond and Gables of Texas to the common general partner and noncontrolling interest partners in Operating Partnership. Also on August 6, 2013, the Board declared a common dividend of \$0.203954 per share on the Company's Class B common stock in respect to the special distribution to the common general partner. On August 28, 2013, the Operating Partnership made a special distribution of \$9,200,000 to the common general partner and noncontrolling interest partners in Operating Partnership. For the nine months ended September 30, 2013 and 2012, the Company's aggregate distribution to noncontrolling interest partners in Operating Partnership totaled \$11,713,200 and \$0, respectively, of which \$2,733,080 and \$0 was payable and included on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012, respectively.

Concurrently with the Operating Partnership distributions on August 28, 2013, the common dividend was paid from the special distribution proceeds of the common general partner. For the nine months ended September 30, 2013 and 2012, the Company's aggregate dividends on the Class B common stock totaled \$286,800 and \$0, respectively, of which \$66,920 and \$0 was payable and included on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012, respectively.

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

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## 8. 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 three and nine months ended September 30, 2013 and 2012 follows:

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Loss from continuing operations prior to adjustments	\$(2,885,392 )	\$(2,925,854 )	\$(11,099,603 )	\$(10,110,438 )
Add: Net loss attributable to noncontrolling interest in Operating Partnership	\$4,488,677	\$4,397,555	—	9,121,238
Less: Preferred dividends	\$(1,675,194 )	\$(1,675,194 )	(5,025,582 )	(5,025,583 )
Net income attributable to noncontrolling interest in properties	\$(25,553 )	\$(127,684 )	(40,361 )	(345,990 )
Net income attributable to noncontrolling interest in Operating Partnership	\$—	\$—	(2,509,405 )	—
Loss from continuing operations	\$(97,462 )	\$(331,177 )	\$(18,674,951 )	\$(6,360,773 )
Net income (loss) from discontinued operations	\$(12,444 )	\$223,502	\$18,736,394	\$6,137,438
Net income (loss) available to common shareholders	\$(109,906 )	\$(107,675 )	\$61,443	\$(223,335 )
Net loss from continuing operations attributable to the Company per common share, basic and diluted	\$(0.07 )	\$(0.24 )	\$(13.28 )	\$(4.52 )
Net income (loss) from discontinued operations attributable to the Company per common share, basic and diluted	\$(0.01 )	\$0.16	\$13.32	\$4.36
Net income (loss) available to common shareholders per common share, basic and diluted	\$(0.08 )	\$(0.08 )	\$0.04	\$(0.16 )
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	\$0.203954	\$—	\$0.203954	\$—

For the nine months ended September 30, 2013 and 2012, the Company did not have any common stock equivalents; therefore basic and dilutive earnings per share were the same.

## 9. 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.

The Company has a commitment to one joint venture multifamily development project as of September 30, 2013. The project is a 154-unit multifamily apartment development project in Walnut Creek, California (the "Walnut Creek Project"). The Company will own a 98% interest in the project once fully committed and its current total commitment in the joint venture is approximately \$16.9 million. The Walnut Creek Project was delayed due to environmental and regulatory requirements. The Company is currently reviewing a revised development budget, which reflects revisions in construction costs and operating assumptions. The revised development budget and operating assumptions are subject to the review and approval of the Company's investment committee. The construction is projected to start in the first quarter of 2014. As of September 30, 2013, the Company has made capital contributions totaling approximately \$1,286,000. The Company consolidates its investment in the Walnut Creek Project.

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## 10. NONCONTROLLING INTEREST IN OPERATING PARTNERSHIP

The following table sets forth the calculation of net income (loss) attributable to noncontrolling interest in the Operating Partnership for the three and nine months ended September 30, 2013 and 2012:

	Three months ended		Nine months ended	
	September 30,		September 30,	
	2013	2012	2013	2012
Net income (loss)	\$(2,897,836 )	\$(2,702,352 )	\$7,636,791	\$(3,973,000 )
Adjust: Net income attributable to noncontrolling interest in properties	(25,553 )	(127,684 )	(40,361 )	(345,990 )
Income (loss) before noncontrolling interest in Operating Partnership	(2,923,389 )	(2,830,036 )	7,596,430	(4,318,990 )
Preferred dividend	(1,675,194 )	(1,675,194 )	(5,025,582 )	(5,025,583 )
Income (loss) available to common equity	(4,598,583 )	(4,505,230 )	2,570,848	(9,344,573 )
Noncontrolling interest in Operating Partnership	97.61 %	97.61 %	97.61 %	97.61 %
Net income (loss) attributable to noncontrolling interest in Operating Partnership	\$(4,488,677 )	\$(4,397,555 )	\$2,509,405	\$(9,121,238 )

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

	For the nine months ended	
	September 30,	
	2013	2012
Balance at beginning of period	\$(89,708,267 )	\$(76,785,818 )
Net income (loss) attributable to noncontrolling interest in Operating Partnership	2,509,405	(9,121,238 )
Distributions to noncontrolling interest partners in Operating Partnership	(12,897,338 )	(1,685,796 )
Balance at end of period	\$(100,096,200 )	\$(87,592,852 )

Distributions of \$1,685,796 have been adjusted from Accumulated Deficit to Noncontrolling Interest-Operating Partnership to properly reflect such amounts within the Consolidated Statement of Changes in Deficit for the nine months ended September 30, 2012. Management has determined such adjustment to be immaterial to the overall financial statements.

As of September 30, 2013 and December 31, 2012, the noncontrolling interest in the Operating Partnership consisted of 5,242,223 Operating Partnership units held by parties other than the Company.

## 11. RELATED PARTY TRANSACTIONS

Amounts accrued or paid to the Company's affiliates are as follows:

	Three months ended		Nine months ended	
	September 30,		September 30,	
	2013	2012	2013	2012
Property management fees	\$781,559	\$886,392	\$2,418,068	\$2,612,471
Expense reimbursements	60,228	53,325	159,035	159,975
Salary reimbursements	2,083,615	2,410,538	6,633,072	7,414,115
Asset management fees	407,913	412,315	1,223,740	1,236,945
Incentive advisory fee	423,153	173,217	1,796,933	1,973,195
Construction management fees	87,925	73,018	207,043	114,105



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Development fees	—	69,705	69,715	209,115
Interest on revolving credit facility	—	31,745	32,981	146,653
Total	\$3,844,393	\$4,110,255	\$12,540,587	\$13,866,574

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Amounts due to affiliates of \$2,051,898 and \$3,446,460 are included in "Due to affiliates, net" at September 30, 2013 and December 31, 2012, respectively, and represent intercompany development fees, expense reimbursements, asset management fees and shared services, which consist of amounts due to affiliates of \$4,917,567 and \$6,505,338 at September 30, 2013 and December 31, 2012, respectively, and amounts due from affiliates of \$2,865,669 and \$3,058,878 at September 30, 2013 and December 31, 2012, respectively.

The Company pays property management fees to an affiliate, Berkshire Advisor, for property management services. The fees are payable at a rate of 4% of gross income. The Company incurred \$2,418,068 and \$2,612,471 of property management fees in the nine-month periods ended September 30, 2013 and 2012, respectively.

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 reimburses an affiliate, Berkshire Advisor, for overhead expenses related to legal and tax services. The Company incurred \$159,035 and \$159,975 of expense reimbursements during the nine months ended September 30, 2013 and 2012, respectively.

The Company reimburses an affiliate, Berkshire Advisor, for payroll expenses related to accounting services and property operations. The Company incurred \$6,633,072 and \$7,414,115 of salary reimbursements during the nine months ended September 30, 2013 and 2012, respectively.

The Company pays Berkshire Advisor a fixed annual asset management fee equal to 0.40%, up to a maximum of \$1,600,000 in any calendar year, 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. Annual asset management fees earned by the affiliate in excess of the \$1,600,000 maximum payable by the Company represent fees attributable to and paid by the noncontrolling partners in the properties. As discussed below, in addition to the fixed fee, effective January 1, 2010, the Company may also pay Berkshire Advisor an incentive advisory fee based on increases in value of the Company that would not be subject to the \$1,600,000 maximum.

On November 12, 2009, the Audit Committee and the Board of the Company approved an amendment to the advisory services agreement with Berkshire Advisor which included an incentive advisory fee component to the existing asset management fees payable to Berkshire Advisor (the "Advisory Services Amendment"). The Advisory Services Amendment became effective January 1, 2010 and provides for an incentive advisory fee based on the increase in fair value of the Company, as calculated and approved by management, over the base value established as of December 31, 2009 ("Base Value"). The Company is required to accrue incentive advisory fees payable to Berkshire Advisor up to 12% of the increase in fair value of the Company above the established Base Value. The Company has recorded \$1,796,933 and \$1,973,195 of incentive advisory fees during the nine months ended September 30, 2013 and 2012, respectively. As of September 30, 2013 and December 31, 2012, the accrued liability of \$7,592,536 and \$6,634,261, respectively, was included in "Due to affiliate, incentive advisory fees" on the Consolidated Balance Sheets. Payments from the plan will approximate the amounts Berkshire Advisor pays to its employees. Payments to employees by Berkshire Advisor pursuant to the plan are generally paid over a four-year period in quarterly installments. Additional limits have been placed on the total amount of payments that can be made by the Company in any given year, with interest accruing at the rate of 7% on any payments due but not yet paid. The Company made \$838,657 and \$0 of incentive advisory fee payments during the nine months ended September 30, 2013 and 2012, respectively.

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 did not make any acquisitions during the nine months ended September 30, 2013 and 2012.

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 \$207,043 and \$114,105 in construction management fees for the nine months ended September 30, 2013 and 2012, 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, L.L.C. ("BRD"), for property development services. The fees were based on the project's development/construction costs. During the nine months ended September 30, 2013 and 2012, the Company incurred \$69,715 and \$209,115, respectively, on the 2020 Lawrence Project. As of September 30,

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2013, \$557,650 has been paid to BRD and construction is completed. The Company did not incur any development fees on the Walnut Creek Project or the NoMa Project to BRD for the nine months ended September 30, 2013 and 2012.

During the nine months ended September 30, 2013 and 2012, the Company borrowed \$1,627,000 and \$1,691,000, respectively, under the revolving credit facility and repaid \$1,627,000 and \$7,349,422 of advances, respectively, during the same periods. The Company incurred interest of \$32,981 and \$146,653 related to the credit facility during the nine months ended September 30, 2013 and 2012, respectively. The Company did not pay any commitment fees during the nine months ended September 30, 2013 or 2012. There was no outstanding balance under the credit facility as of September 30, 2013 and December 31, 2012.

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.

## 12. LEGAL PROCEEDINGS

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. The Company is not aware of any proceedings contemplated by governmental authorities.

## 13. PROFORMA CONDENSED FINANCIAL INFORMATION

During the nine months ended September 30, 2013 and 2012, 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".

## 14. SUBSEQUENT EVENTS

The first and second mortgages on the Berkshires of Columbia property were scheduled to mature on November 1, 2013. The Company exercised the extension options available under the terms of the loans to extend the maturity dates from November 1, 2013 to November 1, 2014. On November 1, 2013, the mortgages were converted to adjustable rate mortgages with a variable interest rate of LIBOR plus 2.40% until the extended maturity date of November 1, 2014.

On November 1, 2013, the Company through its joint venture partnership for the Walnut Creek Project, acquired the land associated with the development project. The purchase price was \$5.6 million and the Company assumed the seller's outstanding loan in the amount of \$4.8 million. The transaction was subject to normal prorations and adjustments.

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Item MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF  
2. OPERATIONS OF BERKSHIRE INCOME REALTY, INC.

You should read the following discussion in conjunction with the consolidated financial statements of Berkshire Income Realty, Inc. (the "Company") and the related notes and other financial information included in this report. For further information please refer to the Company's consolidated financial statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2012.

Forward Looking Statements

The 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, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange 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 negative of such 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 III, LP ("BVF III"), 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 in Part I, Item 1A - Risk Factors of the Company's Annual Report on Form 10-K for the year ended December 31, 2012, as filed with the Securities and Exchange Commission (the "SEC") and other risks and uncertainties as may be detailed from time to time in our public announcements and our reports filed with the SEC.

The foregoing risks 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" 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, developing 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 oversight of the Company's Board of Directors ("Board"). Refer to Part III, Item 13 - Certain Relationships and Related Transactions and Director Independence and Part IV, Item 15 - Notes to the Consolidated Financial Statements, Note 13 - Related Party Transactions of the Company's Annual Report on Form 10-K for the year ended December 31, 2012, as filed with the SEC, for additional information about the Advisor.

Overview

The Company is engaged primarily in the acquisition, ownership, operation, development and rehabilitation of multifamily apartment communities in the Baltimore/Washington D.C., Southeast, Southwest, Northwest and Western 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 Berkshire Income Realty-OP, L.P., a Delaware limited partnership (the "Operating 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 November 13, 2013, the Company owns 100% of the preferred limited partner units of the Operating Partnership, whose terms mirror the terms of the Company's Series A 9% Cumulative Redeemable Preferred Stock 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.

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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 who 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 nine months ended September 30, 2013 included the following:

On February 6, 2013, the Company borrowed \$1,627,000 on the revolving credit facility - affiliate. The proceeds of the borrowing were used to fund the ongoing development activities of the Company.

On June 25, 2013, the Company completed the sale of Walden Pond and Gables of Texas, both located in Houston, Texas, to an unaffiliated buyer. The combined sale price was \$31,500,000 and was subject to normal operating prorations and adjustments as provided for in the purchase and sale agreement.

Also on June 25, 2013, the Company repaid \$1,627,000 of principal on the revolving credit facility - affiliate. The repayment was made from proceeds resulting from the sale of the Walden Pond and Gables of Texas properties.

#### General

The Company detailed a number of significant trends and specific factors affecting the real estate industry in general and the Company's business in particular in Part II, Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations of our Annual Report on Form 10-K for the year ended December 31, 2012. The Company believes those trends and factors continue to be relevant to the Company's performance and financial condition.

#### Liquidity and Capital Resources

##### Cash and Cash Flows

As of September 30, 2013 and December 31, 2012, the Company had \$9,312,414 and \$12,224,361 of cash and cash equivalents, respectively. Cash provided and used by the Company for three- and nine-month periods ended September 30, 2013 and 2012 are as follows:

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Cash provided by operating activities	\$2,747,200	\$5,785,750	\$10,727,319	\$17,081,317
Cash (used in) provided by investing activities	(2,079,416 )	(10,645,963 )	19,113,528	(19,150,963 )
Cash (used in) provided by financing activities	(12,137,453 )	5,131,407	(32,752,794 )	(508,588 )

During the nine months ended September 30, 2013, cash decreased by \$2,911,947. The overall decrease was due primarily to prepayments of mortgage notes payable of \$14,833,286 and capital expenditures of \$12,308,567, related to renovation and development related activities of \$9,088,267 and recurring capital expenditures of \$3,220,300. The decrease was also attributable to the Company's distributions of \$10,164,258 to its noncontrolling interest partners in Operating Partnership and \$5,025,582 to its preferred shareholders. The decrease was partially offset by proceeds received from sale of Walden Pond and Gables of Texas of \$30,958,927 and borrowings from the mortgage notes payable of \$2,770,663.

The Company's principal liquidity demands are expected to be distributions to our preferred and common shareholders and Operating Partnership unitholders based on availability of cash and approval of the Board, capital improvements, rehabilitation projects, ongoing development projects, repairs and maintenance for the properties, debt repayment, and acquisition and development of additional properties within the investment restrictions placed on it by BVF III.

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 Internal Revenue Code of 1986, as amended, applicable to REITs. Funds required to make distributions to our preferred shareholders that are not provided by operating activities will be supplemented by property debt financing and refinancing activities, property sales and advances on the revolving credit facility. Funds required to make distributions to common shareholders and Operating Partnership unitholders are funded by operating and refinancing proceeds.



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The Company intends to meet its long-term liquidity requirements through property sales, property debt financing and refinancing, noting that possible interest rate increases resulting from current economic conditions could negatively impact the Company's ability to refinance existing debt at acceptable rates. As of September 30, 2013, approximately \$154,824,000 of principal, or 33.5% of the Company's outstanding mortgage debt, is due to be repaid through 2015. During that period, principal of \$40,265,000, \$46,287,000 and \$60,137,000 relates to loans that are due to mature and be repaid in full in 2013, 2014 and 2015, respectively. All other payments of principal during the three-year period are normal recurring monthly payments in accordance with the loan amortization schedules. The Company expects to fund any maturing mortgages through refinancing of such mortgages or through the sale of the related properties. Additionally, the Company may seek to expand its purchasing power through the use of joint venture relationships with other companies with liquidity.

As of September 30, 2013, the Company has fixed interest rate mortgage financing on all properties in the portfolio with the exception of Walnut Creek which has no mortgage.

On June 12, 2012, Zocalo Community Development, Inc. ("Zocalo"), the managing member of the joint venture ("JV 2020 Lawrence") of the Operating Partnership's subsidiary, BIR 2020 Lawrence, L.L.C. ("BIR 2020") with Zocalo and JB 2020, LLC, entered into a financing agreement with the State of Colorado, through the Colorado Energy Office, for \$1,250,000 (the "Colorado Energy Loan") to be used for inclusion of energy efficient components in the construction of JV 2020 Lawrence's multifamily apartment building (the "2020 Lawrence Project"). Zocalo has pledged all of its membership interests, both currently owned and subsequently acquired, in JV 2020 Lawrence as collateral for the Colorado Energy Loan. Pursuant to an authorizing resolution adopted by the members of JV 2020 Lawrence, Zocalo will advance the proceeds of the Colorado Energy Loan, as received from time to time, to JV 2020 Lawrence for application to the 2020 Lawrence Project. Such advances to JV 2020 Lawrence will not be considered contributions of capital to JV 2020 Lawrence. Also, Zocalo is authorized and directed to cause JV 2020 Lawrence to repay such advances, including principal and interest, made by Zocalo at such times as required by the Colorado Energy Loan. Any payments pursuant to the authorizing resolution shall be payable only from surplus cash of the 2020 Lawrence Project as defined by U.S. Department of Housing and Urban Development ("HUD") in the governing regulatory agreement of the primary financing on the project as describe above. If surplus cash is not available to satisfy Zocalo's payment obligations under the Colorado Energy Loan, then either Zocalo or BIR 2020, may issue a funding notice, pursuant to the JV 2020 Lawrence limited liability company agreement, for payment obligation amounts due and payable.

The Company has a \$20,000,000 revolving credit facility in place with an affiliate of the Company. The credit facility does not have a stated maturity date but is subject to a 60-day notice of termination provision by which the lender can affect a termination of the commitment. As of September 30, 2013 and December 31, 2012, there was no outstanding balance on the credit facility. An amendment to the original agreement provided for an "Amendment Period" during which the available credit was increased to \$40,000,000 from \$20,000,000 as well as changes to other provisions. The Amendment Period expired on July 31, 2012 and reverted back to the original credit amount of \$20,000,000.

## Capital Expenditures

Payments for capital expenditures totaled \$12,308,567 and \$33,065,794 for the nine months ended September 30, 2013 and 2012, respectively. The Company paid \$3,220,300 and \$4,790,801 for recurring capital expenditures during the nine months ended September 30, 2013 and 2012, 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 paid \$9,088,267 and \$28,274,993 for renovation and development related capital expenditures during the nine months ended September 30, 2013 and 2012, 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 submarket. Costs directly associated with the development of properties are capitalized. Additionally, the Company capitalizes interest, real estate taxes, insurance and project management/development fees. Management uses judgment to determine when a development project commences and capitalization begins and when a development project is substantially complete and capitalization ceases. Generally, most capitalization begins during the pre-construction period, defined as activities that are necessary to start the development of the property. A development is generally considered substantially complete after major construction has ended and the property is available for occupancy. For properties that are built in phases, capitalization generally ceases on each phase when it is considered substantially complete and ready for use. Costs will continue to be capitalized only on those phases under development.

On February 10, 2011, the Operating Partnership, through BIR 2020, entered into an agreement to acquire a 91.08% ownership interest in the 2020 Lawrence Project to develop a 231-unit multifamily mid-rise community in Denver, Colorado. As of September 30, 2013, the project development costs incurred were approximately \$52,272,000, of the total budgeted costs of

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approximately \$55,500,000, of which \$45,463,100 was funded by HUD-insured financing. The Company's total capital commitment to the joint venture is \$8,000,000. The Company had invested 100% of its total committed capital amount of \$8,000,000 as of September 30, 2013. As of September 30, 2013, the development was completed under budget. The Company consolidates its investment in the 2020 Lawrence Project.

On March 2, 2011, the Operating Partnership, through its investment in NoMa JV, acquired a 30% joint venture partnership interest to develop a 603-unit multifamily apartment community in Washington, D.C. (the "NoMa Project"). As of September 30, 2013, the project development costs incurred were approximately \$130,671,000, of the total budgeted costs of approximately \$143,400,000. The Company had invested 100% of its total committed capital amount of \$14,520,000 in NoMa JV as of September 30, 2013. As of September 30, 2013, the NoMa Project was completed under budget. The Company accounts for its investment in NoMa JV as an equity method investment.

On December 12, 2011, the Company executed a limited liability company agreement with an unrelated entity related to the development of a 154-unit multifamily apartment building in Walnut Creek, California (the "Walnut Creek Project"), which is currently in the entitlement phase. Once fully committed, the Company's ownership percentage will be 98%. As of September 30, 2013, the project development costs incurred were approximately \$2,751,000, of the total budgeted costs of approximately \$65,403,000. Total capital currently committed to the project is approximately \$16,873,000. As of September 30, 2013, the Company has made capital contributions of approximately \$1,286,000, or 7.6% of its current total commitment. The Walnut Creek Project was delayed due to environmental and regulatory requirements. The Company is currently reviewing a revised development budget, which reflects revisions in construction costs and operating assumptions. The revised development budget and operating assumptions are subject to the review and approval of the Company's investment committee. The construction is projected to start in the first quarter of 2014. The Company consolidates its investment in the Walnut Creek Project.

The following table presents a summary of the development project, in which the Company holds direct or indirect fee simple interests:

Development Project	Anticipated Total # of Units	Anticipated Average Apt Size (Sq Ft)	Anticipated Rentable Building Size (Sq Ft) (1)	Budgeted Costs (in millions)	Costs Incurred to-date September 30, 2013 (in millions)	Anticipated Completion Date
Walnut Creek (2)	154	854	145,550	65.4	2.8	Q3 2015
Total / Average	154	854	145,550	\$65.4	\$2.8	

(1) Includes retail space of 14,000 sq ft at the Walnut Creek Project.

(2) The Company is currently reviewing a revised development budget, which reflects revisions in construction costs and operating assumptions and is subject to the approval of the Company's investment committee.

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 the lender with documentation evidencing the completion of the repairs, which in some cases, are subject to inspection by the lender.

The Company's capital budgets for 2013 anticipate spending approximately \$7,551,000 for ongoing capital needs. As of September 30, 2013, the Company has not committed to any new significant rehabilitation projects.

Discussion of acquisitions for the nine months ended September 30, 2013

The Company did not acquire any properties during the nine-month period ended September 30, 2013.

Discussion of dispositions for the nine months ended September 30, 2013

On June 25, 2013, the Company completed the sale of Walden Pond and Gables of Texas, both located in Houston, Texas, to an unaffiliated buyer. The combined sale price was \$31,500,000 and was subject to normal operation prorations and adjustments as provided for in the purchase and sale agreement.

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Declaration of Dividends 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 nine months ended September 30, 2013 and 2012, the Company's aggregate dividends on the Preferred Shares totaled \$5,025,582 and \$5,025,583, respectively, of which \$837,607 was payable and included on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012.

During the nine months ended September 30, 2013 and 2012, the Company made tax payments of \$300,000 and \$0, respectively, on behalf of the noncontrolling interest holders in properties as required by the taxing authorities of the jurisdictions in which the Company owns and operates properties, of which \$0 and \$300,000 was payable and included on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012, respectively.

During the nine months ended September 30, 2013 and 2012, the Company made tax payments of \$1,184,138 and \$1,685,796, respectively, on behalf of the noncontrolling interest partners in Operating Partnership as required by the taxing authorities of the jurisdictions in which the Company owns and operates properties. The payments were treated as distributions attributable to the noncontrolling interest in Operating Partnership and are reflected in the Consolidated Statements of Changes in Deficit.

During the nine months ended September 30, 2012, the Board did not authorize the general partner of the Operating Partnership to distribute quarterly distributions to the common general and common limited partners or a common dividend on the Company's Class B common stock.

On August 6, 2013, the Board authorized the general partner of the Operating Partnership to make a special distribution of \$12,000,000 from the proceeds of the sale of Walden Pond and Gables of Texas to the common general partner and noncontrolling interest partners in Operating Partnership. Also on August 6, 2013, the Board declared a common dividend of \$0.203954 per share on the Company's Class B common stock in respect to the special distribution to the common general partner. On August 28, 2013, the Operating Partnership made a special distribution of \$9,200,000 to the common general partner and noncontrolling interest partners in Operating Partnership. For the nine months ended September 30, 2013 and 2012, the Company's aggregate distribution to noncontrolling interest partners in Operating Partnership totaled \$11,713,200 and \$0, respectively, of which \$2,733,080 and \$0 was payable and included on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012, respectively.

Concurrently with the Operating Partnership distributions on August 28, 2013, the common dividend was paid from the special distribution proceeds of the common general partner. For the nine months ended September 30, 2013 and 2012, the Company's aggregate dividends on the Class B common stock totaled \$286,800 and \$0, respectively, of which \$66,920 and \$0 was payable and included on the Consolidated Balance Sheets in "Dividends and distributions payable" as of September 30, 2013 and December 31, 2012, respectively.

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

Leasing Activities

The table below presents leasing activities information which includes the volume of new and renewed leases with average rents for each and the impact of rent concessions for all properties, including those acquired or disposed of during the period.

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	Nine months ended September 30, 2013				Nine months ended September 30, 2012			
	# of Units	Average Apt Size (Sq Ft)	Average Monthly Rent Rate per Apt	Impact of Average Rent Concessions	# of Units	Average Apt Size (Sq Ft)	Average Monthly Rent Rate per Apt	Impact of Average Rent Concessions
New leases	2,189	966	\$1,153	\$ 11	2,396	954	\$1,074	\$ 24
Renewed leases	2,045	963	\$1,176	\$ —	2,509	953	\$1,100	\$ —

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Results of Operations and Financial Condition

The Company's portfolio (the "Total Property Portfolio") consists of all properties acquired or placed in service and owned at any time during the nine months ended September 30, 2013 and 2012. As a result of changes in the Total Portfolio over time, including the change in the portfolio holdings during nine-month periods ended September 30, 2013 and September 30, 2012, 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 Company also presents the comparison of operating results for the nine months ended September 30, 2013 and 2012 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 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. 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 the Company's NOI, calculated and presented in accordance with GAAP, is net income (loss), shown on the Consolidated Statement of Operations. For the three months ended September 30, 2013 and 2012, net income (loss) was \$(2,897,836) and \$(2,702,352), respectively. For the nine months ended September 30, 2013 and 2012, net income (loss) was \$7,636,791 and \$(3,973,000), respectively. A reconciliation of the Company's NOI to net income (loss) for the three- and nine-month periods ended September 30, 2013 and 2012 is presented as part of the following tables.

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Comparison of the three months ended September 30, 2013 to the three months ended September 30, 2012

The table below reflects selected operating information for the Same Property Portfolio. The Same Property Portfolio consists of the 19 properties acquired or placed in service on or prior to January 1, 2012 and owned through September 30, 2013.

	Same Property Portfolio Three months ended September 30,				
	2013	2012	Increase/ (Decrease)	% Change	
Revenue:					
Rental	\$17,876,450	\$17,302,664	\$573,786	3.32	%
Utility reimbursement and other	1,598,745	1,489,723	109,022	7.32	%
Total revenue	19,475,195	18,792,387	682,808	3.63	%
Operating Expenses:					
Operating	4,354,984	4,357,543	(2,559)	(0.06)	)%
Maintenance	1,337,779	1,319,807	17,972	1.36	%
Real estate taxes	1,655,934	1,694,010	(38,076)	(2.25)	)%
General and administrative	—	—	—	—	%
Management fees	779,542	751,944	27,598	3.67	%
Incentive advisory fees	—	—	—	—	%
Total operating expenses	8,128,239	8,123,304	4,935	0.06	%
Net Operating Income	11,346,956	10,669,083	677,873	6.35	%
Non-operating expenses:					
Depreciation	5,856,147	5,984,472	(128,325)	(2.14)	)%
Interest, inclusive of amortization of deferred financing fees	6,179,475	6,251,052	(71,577)	(1.15)	)%
Amortization of acquired in-place leases and tenant relationships	—	16,104	(16,104)	(100.00)	)%
Total non-operating expenses	12,035,622	12,251,628	(216,006)	(1.76)	)%
Net loss	\$(688,666)	\$(1,582,545)	\$893,879	56.48	%



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Comparison of the three months ended September 30, 2013 to the three months ended September 30, 2012

	Total Property Portfolio Three months ended September 30,				
	2013	2012	Increase/ (Decrease)	% Change	
Revenue:					
Rental	\$18,468,549	\$17,303,581	\$1,164,968	6.73	%
Utility reimbursement and other	1,733,686	1,491,736	241,950	16.22	%
Total revenue	20,202,235	18,795,317	1,406,918	7.49	%
Operating Expenses:					
Operating	4,587,613	4,473,126	114,487	2.56	%
Maintenance	1,384,633	1,321,345	63,288	4.79	%
Real estate taxes	1,770,935	1,694,010	76,925	4.54	%
General and administrative	505,702	554,381	(48,679)	(8.78)	)%
Management fees	1,208,938	1,170,760	38,178	3.26	%
Incentive advisory fees	423,153	173,217	249,936	144.29	%
Total operating expenses	9,880,974	9,386,839	494,135	5.26	%
Net Operating Income	10,321,261	9,408,478	912,783	9.70	%
Non-operating expenses:					
Depreciation	6,397,609	5,984,472	413,137	6.90	%
Interest, inclusive of amortization of deferred financing fees	6,784,545	5,680,646	1,103,899	19.43	%
Amortization of acquired in-place leases and tenant relationships	—	16,104	(16,104)	(100.00)	)%
Total non-operating expenses	13,182,154	11,681,222	1,500,932	12.85	%
Loss before equity in loss of unconsolidated multifamily entities and discontinued operations	(2,860,893)	(2,272,744)	(588,149)	(25.88)	)%
Equity in loss of unconsolidated multifamily entities	(24,499)	(653,110)	628,611	96.25	%
Discontinued operations	(12,444)	223,502	(235,946)	(105.57)	)%
Net loss	\$(2,897,836)	\$(2,702,352)	\$(195,484)	(7.23)	)%

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Comparison of the three months ended September 30, 2013 to the three months ended September 30, 2012  
(Same Property Portfolio)

## Revenue

## Rental Revenue

Rental revenue of the Same Property Portfolio increased for the three-month period ended September 30, 2013 in comparison to the same period of 2012. The increase in rental revenue is mainly attributable to increase in rental rates. Average monthly rental rates for the three-month period ended September 30, 2013 of \$1,207 per apartment unit increased by 3.07% over the 2012 rental rates of \$1,171 for the same period, contributing to an increase of approximately \$565,000 in rental revenue. Average physical occupancy for the 2013 Same Property Portfolio was 95.96%, which increased from the 95.62% average in 2012, resulted in an overall increase in revenue of approximately \$9,000. Market conditions remain stable in the majority of the submarkets in which the Company owns and operates apartments. Improving economic conditions and the continued strength in the apartment markets has allowed the Company to implement rent increases at properties in strong markets while retaining high levels of quality tenants throughout the portfolio.

	Same Property Portfolio Three months ended September 30,				
	2013	2012	Increase/ (Decrease)	% Change	
Rental					
Market rent	\$18,973,419	\$18,408,881	\$564,538	3.07	%
Occupancy	(1,096,969 )	(1,106,217 )	9,248	0.84	%
Total Rental	\$17,876,450	\$17,302,664	\$573,786	3.32	%

## Utility reimbursement and other revenue

Same Property Portfolio utility reimbursement and other revenue increased for the three months ended September 30, 2013 as compared to the three months ended September 30, 2012, due primarily to increased utility reimbursements as a result of higher utility expenses for the applicable billing period, as utility expenses are typically billed back to tenants two months in arrears.

The table below breaks out the two major components of utility reimbursement and other revenue:

	Same Property Portfolio Three months ended September 30,				
	2013	2012	Increase/ (Decrease)	% Change	
Utility reimbursement and other					
Utility reimbursement	\$821,410	\$722,751	\$98,659	13.65	%
Other	777,335	766,972	10,363	1.35	%
Total Utility reimbursement and other	\$1,598,745	\$1,489,723	\$109,022	7.32	%

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## Operating Expenses

## Operating

Operating expenses decreased slightly in the three months ended September 30, 2013 as compared to the same period of 2012. Savings in state income taxes at Executive House were partially offset by higher payroll and property insurance expenses.

The following table breaks out the major components of operating expense:

	Same Property Portfolio Three months ended September 30,					
	2013	2012	Increase/ (Decrease)	% Change		
Operating						
Payroll	\$1,810,835	\$1,755,272	\$55,563	3.17	%	
Utilities	1,301,197	1,336,565	(35,368)	(2.65)	)%	
Insurance	394,684	377,340	17,344	4.60	%	
Property-related G&A	490,665	467,818	22,847	4.88	%	
Leasing	197,438	222,604	(25,166)	(11.31)	)%	
Advertising	147,862	164,683	(16,821)	(10.21)	)%	
Other	12,303	33,261	(20,958)	(63.01)	)%	
Total Operating	\$4,354,984	\$4,357,543	\$(2,559)	(0.06)	)%	

## Maintenance

Maintenance expenses increased in the three months ended September 30, 2013 as compared to the same period of 2012, mainly due to increases in other expenses. 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.

The table below breaks out the major components of maintenance expense:

	Same Property Portfolio Three months ended September 30,					
	2013	2012	Increase/ (Decrease)	% Change		
Maintenance						
Pool service	\$92,280	\$83,388	\$8,892	10.66	%	
Exterminating	41,575	42,950	(1,375)	(3.20)	)%	
Landscaping	178,863	192,949	(14,086)	(7.30)	)%	
Supplies	16,840	16,223	617	3.80	%	
Cleaning	228,235	234,879	(6,644)	(2.83)	)%	
Painting	264,331	272,254	(7,923)	(2.91)	)%	
Repairs	319,810	339,323	(19,513)	(5.75)	)%	
Other	195,845	137,841	58,004	42.08	%	
Total Maintenance	\$1,337,779	\$1,319,807	\$17,972	1.36	%	



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Real Estate Taxes

Real estate taxes decreased for the three months ended September 30, 2013 from the comparable period of 2012. The Company continually scrutinizes the assessed values of its properties and participates in arbitration hearings or similar forums with the taxing authorities to appeal increases in assessed values 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 and has received tax refunds of approximately \$113,000 on two properties during the three months ended September 30, 2013. Going forward, the Company anticipates a general upward trend in real estate tax expense as local and state taxing agencies continue to place significant reliance on property tax revenue.

Management Fees

Management fees of the Same Property Portfolio increased for the three months ended September 30, 2013 compared to the three months ended September 30, 2012 as a result of an increase in total revenue of the operating properties.

Non-Operating Expenses

Depreciation

Depreciation expense of the Same Property Portfolio decreased for the three months ended September 30, 2013 as compared to the same period of the prior year. The decrease is a result of assets that have been fully depreciated, partially offset by the additions to the basis of fixed assets in the portfolio driven by normal recurring capital spending activities over the remaining properties in the Same Property Portfolio.

Interest, inclusive of amortization of deferred financing fees

Interest expense for the three months ended September 30, 2013 decreased over the comparable period of 2012 primarily due to reduced principal balances at most properties as a result of mortgage principal amortization.

Amortization of acquired in-place leases and tenant relationships

Amortization of acquired in-place-leases and tenant relationships decreased in the three months ended September 30, 2013 as compared to the same period in 2012. The decrease is related to the completion of amortization of the acquired-in-place lease and tenant relationships intangible assets booked at acquisition and amortized over a 24-month period which did not extend into the three-month period ended September 30, 2013.

Comparison of the three months ended September 30, 2013 to the three months ended September 30, 2012  
(Total Property Portfolio)

In addition to the reasons discussed with respect to the Same Property Portfolio, changes in revenue, total operating expenses and non-operating expenses of the Total Property Portfolio for the three months ended September 30, 2013 as compared to the three months ended September 30, 2012 are due mainly to the fluctuations in the actual properties owned during the comparative periods. Total revenue increased mainly due to the completion of the 2020 Lawrence Project during the first quarter of 2013. The increase in total operating and non-operating expenses was also attributable to increased expenses for the 2020 Lawrence Project, as expenses for the project were capitalized during the same period in 2012, in addition to increased incentive advisory fees. (Refer to Related Party Transactions on page 18 for further discussion.)



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Comparison of the nine months ended September 30, 2013 to the nine months ended September 30, 2012

The table below reflects selected operating information for the Same Property Portfolio. The Same Property Portfolio consists of the 19 properties acquired or placed in service on or prior to January 1, 2012 and owned through September 30, 2013.

	Same Property Portfolio					
	Nine months ended September 30,		Increase/ (Decrease)	% Change		
	2013	2012				
Revenue:						
Rental	\$53,230,993	\$51,232,514	\$1,998,479	3.90		%
Utility reimbursement and other	4,814,534	4,456,753	357,781	8.03		%
Total revenue	58,045,527	55,689,267	2,356,260	4.23		%
Operating Expenses:						
Operating	12,923,564	12,853,875	69,689	0.54		%
Maintenance	3,396,637	3,554,504	(157,867)	(4.44)		%
Real estate taxes	5,259,641	5,118,212	141,429	2.76		%
General and administrative	—	—	—	—		%
Management fees	2,321,501	2,215,293	106,208	4.79		%
Incentive advisory fees	—	—	—	—		%
Total operating expenses	23,901,343	23,741,884	159,459	0.67		%
Net Operating Income	34,144,184	31,947,383	2,196,801	6.88		%
Non-operating expenses:						
Depreciation	17,595,824	18,483,621	(887,797)	(4.80)		%
Interest, inclusive of amortization of deferred financing fees	18,418,740	18,677,331	(258,591)	(1.38)		%
Amortization of acquired in-place leases and tenant relationships	5,378	52,176	(46,798)	(89.69)		%
Total non-operating expenses	36,019,942	37,213,128	(1,193,186)	(3.21)		%
Net loss	\$(1,875,758)	\$(5,265,745)	\$3,389,987	64.38		%

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Comparison of the nine months ended September 30, 2013 to the nine months ended September 30, 2012

	Total Property Portfolio				
	Nine months ended September 30,				
	2013	2012	Increase/ (Decrease)	% Change	
Revenue:					
Rental	\$54,397,584	\$51,217,005	\$3,180,579	6.21	%
Utility reimbursement and other	5,075,818	4,461,440	614,378	13.77	%
Total revenue	59,473,402	55,678,445	3,794,957	6.82	%
Operating Expenses:					
Operating	13,662,836	13,034,206	628,630	4.82	%
Maintenance	3,497,705	3,556,043	(58,338)	(1.64)	)%
Real estate taxes	5,606,147	5,119,712	486,435	9.50	%
General and administrative	1,743,601	1,878,723	(135,122)	(7.19)	)%
Management fees	3,605,724	3,458,423	147,301	4.26	%
Incentive advisory fees	1,796,933	1,973,195	(176,262)	(8.93)	)%
Total operating expenses	29,912,946	29,020,302	892,644	3.08	%
Net Operating Income	29,560,456	26,658,143	2,902,313	10.89	%
Non-operating expenses:					
Depreciation	19,157,233	18,483,621	673,612	3.64	%
Interest, inclusive of amortization of deferred financing fees	19,841,847	17,986,913	1,854,934	10.31	%
Amortization of acquired in-place leases and tenant relationships	5,377	52,176	(46,799)	(89.69)	)%
Total non-operating expenses	39,004,457	36,522,710	2,481,747	6.80	%
Loss before equity in loss of unconsolidated multifamily entities and discontinued operations	(9,444,001)	(9,864,567)	420,566	4.26	%
Equity in loss of unconsolidated multifamily entities	(1,655,602)	(245,871)	(1,409,731)	(573.36)	)%
Discontinued operations	18,736,394	6,137,438	12,598,956	205.28	%
Net income (loss)	\$7,636,791	\$(3,973,000)	\$11,609,791	292.22	%



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Comparison of the nine months ended September 30, 2013 to the nine months ended September 30, 2012  
(Same Property Portfolio)

## Revenue

## Rental Revenue

Rental revenue of the Same Property Portfolio increased for the nine-month period ended September 30, 2013 in comparison to the same period of 2012. The increase in rental revenue is mainly attributable to increase in rental rates. Average monthly rental rates for the nine-month period ended September 30, 2013 of \$1,198 per apartment unit increased by 3.45% over the 2012 rental rates of \$1,158 for the same period, contributing to an increase of approximately \$1,909,000 in rental revenue. Average physical occupancy for the 2013 Same Property Portfolio was 95.94%, which increased slightly from the 95.43% average in 2012, resulted in an overall increase in revenue of approximately \$89,000. Market conditions remain stable in the majority of the submarkets in which the Company owns and operates apartments. Improving economic conditions and the continued strength in the apartment markets has allowed the Company to implement rent increases at properties in strong markets while retaining high levels of quality tenants throughout the portfolio.

	Same Property Portfolio Nine months ended September 30,				% Change
	2013	2012	Increase/ (Decrease)		
Rental					
Market rent	\$56,591,845	\$54,682,864	\$1,908,981	3.49	%
Occupancy	(3,360,852 )	(3,450,350 )	89,498	2.59	%
Total Rental	\$53,230,993	\$51,232,514	\$1,998,479	3.90	%

## Utility reimbursement and other revenue

Same Property Portfolio utility reimbursement and other revenue increased for the nine months ended September 30, 2013 as compared to the nine months ended September 30, 2012, due partially to increased utility reimbursements as a result of higher utility expenses.

The table below breaks out the two major components of utility reimbursement and other revenue:

	Same Property Portfolio Nine months ended September 30,				% Change
	2013	2012	Increase/ (Decrease)		
Utility reimbursement and other					
Utility reimbursement	\$2,511,909	\$2,176,382	\$335,527	15.42	%
Other	2,302,625	2,280,371	22,254	0.98	%
Total Utility reimbursement and other	\$4,814,534	\$4,456,753	\$357,781	8.03	%

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## Operating Expenses

## Operating

Operating expenses increased in the nine months ended September 30, 2013 as compared to the same period of 2012. Higher utilities and property insurance expenses and lower gain on fixed assets replacement were partially offset by savings in state income taxes at Executive House in addition to savings in payroll and leasing expenses.

The following table breaks out the major components of operating expense:

	Same Property Portfolio Nine months ended September 30,				
	2013	2012	Increase/ (Decrease)	% Change	
Operating					
Payroll	\$5,426,577	\$5,422,901	\$3,676	0.07	%
Utilities	3,984,409	3,892,140	92,269	2.37	%
Insurance	1,176,569	1,105,491	71,078	6.43	%
Property-related G&A	1,377,558	1,468,955	(91,397)	(6.22)	)%
Leasing	544,276	593,194	(48,918)	(8.25)	)%
Advertising	444,310	475,838	(31,528)	(6.63)	)%
(Gain) loss on fixed assets replacement	(78,450)	(218,092)	139,642	(64.03)	)%
Other	48,315	113,448	(65,133)	(57.41)	)%
Total Operating	\$12,923,564	\$12,853,875	\$69,689	0.54	%

## Maintenance

Maintenance expenses decreased in the nine months ended September 30, 2013 as compared to the same period of 2012, mainly due to savings in repairs, landscaping and painting. 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.

The table below breaks out the major components of maintenance expense:

	Same Property Portfolio Nine months ended September 30,				
	2013	2012	Increase/ (Decrease)	% Change	
Maintenance					
Pool service	\$242,848	\$225,977	\$16,871	7.47	%
Exterminating	111,182	130,524	(19,342)	(14.82)	)%
Landscaping	554,942	616,397	(61,455)	(9.97)	)%
Supplies	49,415	45,539	3,876	8.51	%
Cleaning	578,567	600,733	(22,166)	(3.69)	)%
Snow removal	12,932	14,906	(1,974)	(13.24)	)%
Painting	645,487	688,267	(42,780)	(6.22)	)%
Repairs	729,519	771,257	(41,738)	(5.41)	)%
Other	471,745	460,904	10,841	2.35	%
Total Maintenance	\$3,396,637	\$3,554,504	\$(157,867)	(4.44)	)%



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Real Estate Taxes

Real estate taxes increased for the nine months ended September 30, 2013 from the comparable period of 2012. The Company continually scrutinizes the assessed values of its properties and participates in arbitration hearings or similar forums with the taxing authorities to appeal increases in assessed values 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. Going forward, the Company anticipates a general upward trend in real estate tax expense as local and state taxing agencies continue to place significant reliance on property tax revenue.

Management Fees

Management fees of the Same Property Portfolio increased for the nine months ended September 30, 2013 compared to the nine months ended September 30, 2012 as a result of an increase in total revenue of the operating properties.

Non-Operating Expenses

Depreciation

Depreciation expense of the Same Property Portfolio decreased for the nine months ended September 30, 2013 as compared to the same period of the prior year. The decrease is a result of assets that have been fully depreciated, partially offset by the additions to the basis of fixed assets in the portfolio driven by normal recurring capital spending activities over the remaining properties in the Same Property Portfolio.

Interest, inclusive of amortization of deferred financing fees

Interest expense for the nine months ended September 30, 2013 decreased over the comparable period of 2012 primarily due to reduced principal balances at most properties as a result of mortgage principal amortization.

Amortization of acquired in-place leases and tenant relationships

Amortization of acquired in-place-leases and tenant relationships decreased in the nine months ended September 30, 2013 as compared to the same period in 2012. The decrease is related to the completion of amortization of the acquired in-place leases and tenant relationships intangible assets booked at acquisition and amortized over a 24-month period which did not extend into the nine-month period ended September 30, 2013.

Comparison of the nine months ended September 30, 2013 to the nine months ended September 30, 2012  
(Total Property Portfolio)

In addition to the reasons discussed with respect to the Same Property Portfolio, changes in revenue, total operating expenses and non-operating expenses of the Total Property Portfolio for the nine months ended September 30, 2013 as compared to the nine months ended September 30, 2012 are due mainly to the fluctuations in the actual properties owned during the comparative periods. Total revenue increased mainly due to the completion of the 2020 Lawrence Project during the first quarter of 2013. The increase in total operating and non-operating expenses was also attributable to increased expenses for the 2020 Lawrence Project, as expenses for the project were capitalized during the same period in 2012. The increase in total operating expenses was partially offset by decreased incentive advisory fees. (Refer to Related Party Transactions on page 18 for further discussion.)

Funds From Operations

The Company follows 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, impairments, real estate related depreciation and amortization, and adjustment for unconsolidated partnerships and joint 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 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.

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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 three and nine months ended September 30, 2013 and 2012:

	Three months ended September 30,		Nine months ended September 30,	
	2013	2012	2013	2012
Net income (loss)	\$(2,897,836 )	\$(2,702,352 )	\$7,636,791	\$(3,973,000 )
Add:				
Depreciation of real property	5,563,785	5,417,852	16,739,010	16,777,332
Depreciation of real property included in results of discontinued operations	—	668,825	513,336	2,143,299
Amortization of acquired in-place leases and tenant relationships	—	16,104	5,377	52,176
Equity in loss of unconsolidated multifamily entities	24,499	653,110	1,655,602	245,871
Funds from operations of unconsolidated multifamily entities, net of impairments	307,279	315,832	1,107,675	893,487
Less:				
Funds from operations of noncontrolling interest in properties	(188,842 )	(344,052 )	(526,830 )	(1,008,884 )
Gain on disposition of real estate assets	—	—	(18,689,058 )	(6,622,210 )
Funds from Operations	\$2,808,885	\$4,025,319	\$8,441,903	\$8,508,071

FFO decreased for the three and nine month periods ended September 30, 2013 as compared to the same three and nine month periods ended September 30, 2012. The decrease in FFO is mainly attributable to higher interest expense resulting from the treatment of interest for the 2020 Lawrence Project and NoMa development. Both properties are now operational and interest is being expensed as opposed to the prior comparative period where interest was being capitalized during the construction phase of the projects. Further, the decrease in FFO is also attributable to the loss of operating income provided by assets that were sold in the fourth quarter of 2012 and the second quarter of 2013, which were partially offset by higher net operating income from the balance of the portfolio driven by higher rents and added operations from the 2020 Lawrence Project.

## 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 re-evaluates potential environmental liabilities on an annual basis by reviewing the properties in the portfolio at year end as the portfolio continues to change with the sale and acquisition of properties.



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## Inflation and Economic Conditions

Substantially all of the leases at our 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.

Though the United States economy continues to be challenged by the high unemployment rate, slow but reasonably steady growth is still seen in many parts of the economy. The multifamily sector continues to exhibit strong fundamentals and improved performance on a national basis, evidenced by improved occupancy levels and increases in effective rents. These improvements are due, in large part, to favorable supply and demand dynamics, as construction of new apartment units and single family homes has decreased significantly, home ownership has declined, and the home buying market has weakened due to stricter mortgage qualification standards and declining home values.

Credit worthy borrowers in the multifamily sector continue to be able to access capital through Fannie Mae and Freddie Mac and other sources, at historically low interest 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 potential residents from entering the rental market as many have chosen 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 rebounds and unemployment rates continue to trend back to historical norms. The Company's properties are principally 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 recovery and is prepared to take advantage of opportunities that present themselves during such times.

## Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company's mortgage notes are fixed rate instruments; therefore, the Company's outstanding mortgage debt is not sensitive to changes in the capital market except upon maturity. The Company's revolving credit facility is a variable rate arrangement tied to LIBOR and is therefore sensitive to changes in the capital market. The tables below provide information about the Company's financial instruments, specifically debt obligations.

The following table presents scheduled principal and interest payments and related weighted average interest rates by expected maturity dates for mortgage notes payable as of September 30, 2013.

	2013	2014	2015	2016	2017	Thereafter	Total	
Fixed Rate Debt	\$41,309,350	\$50,345,341	\$63,169,749	\$73,012,841	\$39,800,983	\$194,088,359	\$461,726,623	
Interest Payments (2)	6,324,095	23,319,767	18,405,402	16,308,651	12,449,798	87,839,289	164,647,002	
Average Interest Rate(1)(2)	5.61	% 5.66	% 5.68	% 5.69	% 5.69	% 5.63	% 5.61	%



- (1) The Company's mortgage notes are fixed rate instruments; therefore, the Company's outstanding mortgage debt is not sensitive to changes in the capital markets except upon maturity.

Interest payments represent amounts expected to be made on outstanding debt as of September 30, 2013. Average (2) interest rate represents weighted average of stated interest rates on the mortgage debt as applied to the principal balance payable in the respective period.

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The following table presents scheduled principal and interest payments and related stated interest rates by expected maturity dates for the note payable - other as of September 30, 2013.

	2013	2014	2015	2016	2017	Thereafter	Total	
Fixed Rate Debt (1)	\$—	\$—	\$ 18,545	\$ 38,493	\$ 40,442	\$ 1,152,520	\$ 1,250,000	
Interest Payments (3)	30,993	62,500	62,757	61,098	59,149	239,289	515,786	
Average Interest Rate (2)(3)	5.00	% 5.00	% 5.00	% 5.00	% 5.00	% 5.00	% 5.00	%

(1) Relates to the Colorado Energy Loan as described in Note 6 - Note Payable - Other of Notes to Consolidated Financial Statements.

(2) The Company's note payable - other is a fixed rate instrument; therefore, the Company's outstanding note payable - other is not sensitive to changes in the capital markets except upon maturity.

(3) Interest payments represent amounts expected to be made on outstanding debt as of September 30, 2013. Average interest rate represents the stated interest rates on the note payable - other for the respective period.

#### Item 4. CONTROLS AND PROCEDURES

##### Disclosure Controls and Procedures

Based on their evaluation, as 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 September 30, 2013 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 September 30, 2013 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.

##### Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) under the Exchange Act) 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 fiscal quarter ended September 30, 2013, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

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Part II OTHER INFORMATION

Item 1. LEGAL PROCEEDINGS

There were no material litigation developments during the quarter. See Note 12 - Legal Proceedings of Notes to Consolidated Financial Statements.

Item 1A. RISK FACTORS

Please read the risk factors disclosed in our Annual Report on Form 10-K for the Company's fiscal year ended December 31, 2012 as filed with the SEC on March 28, 2013. As of September 30, 2013, there have been no material changes to the risk factors as presented therein. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our financial condition and/or operating results.

Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

- None

Item 3. DEFAULTS UPON SENIOR SECURITIES

- None

Item 4. MINE SAFETY DISCLOSURES

- Not applicable

Item 5. OTHER INFORMATION

- None

Item 6. EXHIBITS

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

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

101. The following materials from Berkshire Income Realty, Inc.'s Quarterly Report on Form 10-Q for the quarter ended September 30, 2013, formatted in XBRL (Extensible Business Reporting Language): (i) the Consolidated Balance Sheets, (ii) the Consolidated Statements of Operations, (iii) the Consolidated Statements of Changes in Deficit, (iv) the Consolidated Statements of Cash Flows, and (v) Notes to Consolidated Financial Statements.



SIGNATURES

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

November 14, 2013

BERKSHIRE INCOME REALTY, INC.  
/s/ David C. Quade  
David C. Quade  
President and Principal Executive Officer

November 14, 2013

/s/ David E. Doherty  
David E. Doherty  
Senior Vice President and Principal Financial Officer