BERKSHIRE INCOME REALTY INC
Form SC TO-I/A
April 07, 2003

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE TO-I/A

TENDER OFFER STATEMENT UNDER SECTION 14(D)(1)
OR SECTION 13(E)(1) OF THE SECURITIES EXCHANGE ACT OF 1934

(AMENDMENT NO. 9)

KRUPP INSURED PLUS II LIMITED PARTNERSHIP
(Name of Subject Company (Issuer))

BERKSHIRE INCOME REALTY, INC.
KRF COMPANY, L.L.C.
KRUPP FAMILY LIMITED PARTNERSHIP - 94
THE GEORGE KRUPP 1980 FAMILY TRUST
THE DOUGLAS KRUPP 1980 FAMILY TRUST
GEORGE D. KRUPP
DOUGLAS KRUPP
(Names of Filing Persons (Offerors))

DEPOSITARY RECEIPTS
(Title of Class of Securities)

NONE
(CUSIP Number of Class of Securities)

SCOTT D. SPELFOGEL, ESQ.
GENERAL COUNSEL
BERKSHIRE INCOME REALTY, INC.
ONE BEACON STREET, SUITE 1500
BOSTON, MASSACHUSETTS 02108
(617) 523-7722
(Name, address and telephone number of person authorized
to receive notices and communications on behalf of filing
persons)

WITH COPIES TO:
JAMES M. DUBIN, ESQ.
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064
(212) 373-3000

CALCULATION OF FILING FEE:

TRANSACTION VALUATION*	AMOUNT OF FILING FEE**
$4,616,486.70	$923.30

* For purposes of calculating the filing fee only. This calculation assumes the exchange of 4,396,654 units of depositary receipts representing units of limited partner interests of Krupp Insured Plus II Limited Partnership for 184,659.47 shares of Series A Cumulative Redeemable Preferred Stock of Berkshire Income Realty, Inc. valued as of January 10, 2003 at $25.00 per share.

** The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, equals 1/50 of 1% of the transaction valuation.

[X] Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number or the Form or Schedule and the date of its filing.

Amount Previously Paid:	$9,947.50
Filing Party:	Berkshire Income Realty, Inc.
Form or Registration No.:	Form S-11 (333-98571)
Date Filed:	August 22, 2002

The filing fee in the amount of $923.30 was offset against the above-referenced S-11 fees.

[_] Check the box if the filing relates to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

[_] THIRD-PARTY TENDER OFFER SUBJECT TO RULE 14D-1.

[X] ISSUER TENDER OFFER SUBJECT TO RULE 13E-4.

[_] GOING-PRIVATE TRANSACTION SUBJECT TO RULE 13E-3.

[_] AMENDMENT TO SCHEDULE 13D UNDER RULE 13D-2.

[X] Check the box if the filing is a final amendment reporting the results of the tender offer.

This Amendment No. 9 amends and supplements the Tender Offer Statement on Schedule TO filed with the SEC on January 10, 2003 (as amended, the "Schedule TO") by Berkshire Income Realty, Inc., a Maryland corporation ("BIR"), BIR's sole stockholder, KRF Company, L.L.C., a Delaware limited liability company ("KRF"), KRF's sole member, Krupp Family Limited Partnership - 94, a Massachusetts limited partnership ("KFLP"), KFLP's limited partners, The George Krupp 1980 Family Trust, a Massachusetts trust, and The Douglas Krupp 1980 Family Trust, a Massachusetts trust, and KFLP's general partners, George D. Krupp and Douglas Krupp. The Schedule TO relates to the offer by BIR to exchange shares of BIR's 9% Series A Cumulative Redeemable Preferred Stock for up to 4,396,654 units of depositary receipts representing units of limited partner

interests of Krupp Insured Plus II Limited Partnership, a Massachusetts limited partnership (the "Company"), on the terms and conditions contained in BIR's prospectus, dated January 9, 2003, and in the related letter of transmittal, copies of which are incorporated by reference on the Schedule TO filed with the SEC on January 10, 2003 as Exhibits (a)(1) and (a)(2), respectively (which, together with any amendments or supplements thereto, collectively constitute the "Offer"). Capitalized terms used herein but not otherwise defined have the respective meanings given them in the Offer.

This Amendment No. 9 reports the results of the Offer and is the final amendment to the Schedule TO.

ITEM 8. INTEREST IN SECURITIES OF THE SUBJECT COMPANY.

Item 8 of the Schedule TO is hereby amended and supplemented by adding the following:

The Offer expired at 5:00 p.m., New York City time, on April 2, 2003. A total of approximately 3,752,796 Interests were validly tendered and not withdrawn pursuant to the Offer. On April 4, 2003, BIR accepted an aggregate of approximately 3,663,855 Interests (the "Accepted Interests") in accordance with the terms of the Offer. These Accepted Interests were accepted on a pro rata basis, and a proration factor of 97.63% was applied.

On April 4, 2003, BIR transferred all of the Accepted Interests to its operating partnership, Berkshire Income Realty-OP, L.P. ("BIR-OP"), in exchange for preferred limited partner interests in BIR-OP. Based on 14,655,512 Interests issued and outstanding as of April 4, 2003, BIR-OP became the record owner of approximately 25.00% of the outstanding Interests. BIR-OP will have the sole power to vote or to direct the vote and to dispose or to direct the disposition of the Accepted Interests. However, pursuant to the Company's partnership agreement, Interests held by affiliates of the general partner of the Company may not be voted. BIR-OP is an affiliate of the general partner of the Company. Each of (i) the filing persons (BIR, KRF, KFLP, the Trusts, George D. Krupp and Douglas Krupp) and (ii) BIR GP, L.L.C. (the general partner of BIR-OP and a wholly owned subsidiary of BIR), by virtue of their beneficial ownership of BIR-OP, may be deemed to beneficially own the Accepted Interests held of record by BIR-OP.

ITEM 11. ADDITIONAL INFORMATION.

As more fully described under Item 8 above (which description is incorporated herein in response to this Item 11), on April 4, 2003, BIR completed the Offer.

On April 7, 2003, BIR issued a press release announcing the final results and proration factor of the Offer, a copy of which is filed as Exhibit (a)(19) to this Amendment No. 9 and is incorporated herein by reference.

ITEM 12. EXHIBITS.

Item 12 of the Schedule TO is hereby amended and supplemented to add the following exhibit:

(a)(19) Press Release, dated April 7, 2003.

SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

BERKSHIRE INCOME REALTY, INC.

By: /s/ David C. Quade

David C. Quade
President

KRF COMPANY, L.L.C.

By: Krupp Family Limited Partnership - 94,
its sole member

By: /s/ Douglas Krupp

Douglas Krupp
General Partner

KRUPP FAMILY LIMITED PARTNERSHIP - 94

By: /s/ Douglas Krupp

Douglas Krupp
General Partner

THE GEORGE KRUPP 1980 FAMILY TRUST

By: /s/ Lawrence I. Silverstein

Lawrence I. Silverstein
Trustee

THE DOUGLAS KRUPP 1980 FAMILY TRUST

By: /s/ Lawrence I. Silverstein

Lawrence I. Silverstein
Trustee

/s/ George D. Krupp

GEORGE D. KRUPP

/s/ Douglas Krupp

DOUGLAS KRUPP

Dated: April 7, 2003

INDEX TO EXHIBITS

EXHIBIT NUMBER	
*(a)	(1) Prospectus, dated January 9, 2003 (incorporated by reference from BIR's Registration Statement on Form S-11(Registration No. 333-98571) (the "Form S-11")).
*(a)	(2) Form of Letter of Transmittal.
*(a)	(3) Letter to Investors.
*(a)	(4) Instructions for Completing the Letter of Transmittal.
*(a)	(5) Brochure.
*(a)	(6) Press Release, dated January 10, 2003.
*(a)	(7) Transcripts of telephone messages to potential investors.
*(a)	(8) Transcript of telephone message to potential investors.
*(a)	(9) Letter to Brokers.
*(a)	(10) Letter to Investors.
*(a)	(11) Press Release, dated February 14, 2003.
*(a)	(12) Letter of Transmittal.
*(a)	(13) Prospectus Supplement No. 1, dated February 27, 2003.
*(a)	(14) Letter to Investors.
*(a)	(15) Letter to Investors.
*(a)	(16) Transcript of telephone message to potential investors.
*(a)	(17) Press Release, dated March 14, 2003.
*(a)	(18) Prospectus Supplement No. 2, dated March 14, 2003.
(a)	(19) Press Release, dated April 7, 2003.
(b)	Not applicable.

(d) Not applicable.

*(g) (1) Transcript of telephone messages to potential investors.

*(g) (2) Power point presentation to information agents.

*(g)(3) Transcripts of telephone messages to potential investors.

*(h) Opinion of Paul, Weiss, Rifkind, Wharton & Garrison LLP regarding federal income tax considerations (incorporated herein by reference to Exhibit 8.1 of the Form S-11).

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* Previously filed.