
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q

(MARK ONE)

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

FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2004

OR

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

FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER 1-9516

AMERICAN REAL ESTATE PARTNERS, L.P.
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE	13-3398766
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NO.)
100 SOUTH BEDFORD ROAD, MT. KISCO, NY	10549
(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES)	(ZIP CODE)

(914) 242-7700
(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 [X] No [ ]

Indicate by check mark whether the registrant is an accelerated filer (as defined in Exchange Act Rule 12b-2) Yes [X] No [ ]

INDEX

AMERICAN REAL ESTATE PARTNERS, L.P.

FORM 10-Q MARCH 31, 2004

PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

The financial information contained herein is unaudited; however, in the opinion of management, all adjustments necessary for a fair presentation of such financial information have been included. All such adjustments are of a normal recurring nature.

CONSOLIDATED BALANCE SHEETS

	MARCH 31, 2004	DECEMBER 31, 2003
	(UNAUDITED)	
	(IN $000'S)	
ASSETS		
REAL ESTATE LEASED TO OTHERS:		
Accounted for under the financing method	$ 131,413	$ 137,356
Accounted for under the operating method, net of accumulated depreciation	76,127	76,443
PROPERTIES HELD FOR SALE	148,878	128,813
INVESTMENT IN U.S. GOVERNMENT AND AGENCY OBLIGATIONS	122,650	61,573
CASH AND CASH EQUIVALENTS	483,872	467,704
MARKETABLE EQUITY AND DEBT SECURITIES	47,584	80,522
MORTGAGES AND NOTES RECEIVABLE	104,745	50,328
INVESTMENT IN NEG HOLDING LLC	77,250	69,346
EQUITY INTEREST IN GB HOLDINGS, INC	29,766	30,854
HOTEL, CASINO AND RESORT OPERATING PROPERTIES net of accumulated depreciation:		

Stratosphere Corporation hotel and casino	171,405	174,249
Hotel and resort	35,358	41,526
LAND AND CONSTRUCTION-IN-PROGRESS	43,708	43,459
DEFERRED TAX ASSET	80,835	82,450
RESTRICTED CASH	219,313	--
RECEIVABLES AND OTHER ASSETS	54,053	45,307
TOTAL	$1,826,957	$1,489,930
LIABILITIES AND PARTNERS' EQUITY		
MORTGAGES PAYABLE:		
REAL ESTATE LEASED TO OTHERS	$ 96,778	$ 98,128
PROPERTIES HELD FOR SALE	82,473	82,861
	179,251	180,989
SENIOR SECURED NOTES PAYABLE	215,000	--
LIABILITY FOR PURCHASED SECURITIES	54,769	--
ACCOUNTS PAYABLE, ACCRUED EXPENSES AND OTHER LIABILITIES	60,315	53,844
PREFERRED LIMITED PARTNERSHIP UNITS:		
Preferred units, $10 liquidation preference, 5% cumulative pay-in-kind redeemable; 10,400,000 authorized; 10,286,264 and 9,796,607 issued and outstanding as of March 31, 2004 and Dec. 31, 2003	102,863	101,649
	612,198	336,482
COMMITMENTS AND CONTINGENCIES (Notes 2 and 3)		
LIMITED PARTNERS:		
Depositary units; 47,850,000 authorized; 47,235,484 outstanding as of March 31, 2004 and December 31, 2003	1,244,960	1,184,870
GENERAL PARTNER	(18,280)	(19,501)
TREASURY UNITS AT COST:		
1,137,200 depositary units	(11,921)	(11,921)
PARTNERS' EQUITY	1,214,759	1,153,448
TOTAL	$1,826,957	$1,489,930

See notes to consolidated financial statements.

AMERICAN REAL ESTATE PARTNERS, L.P.

FORM 10-Q MARCH 31, 2004

CONSOLIDATED STATEMENTS OF EARNINGS

	THREE MONTHS ENDED MARCH 31,	
	2004	2003
		(RESTATED)
	(UNAUDITED)	
	(IN $000'S EXCEPT PER UNIT DATA)	
REVENUES:		
Hotel and casino operating income	$ 45,715	$ 40,642
Land, house and condominium sales	5,014	4,860
Interest income on financing leases	2,936	3,418
Interest income on U.S. Government and Agency obligations and other investments	4,883	4,560
Rental income	3,161	2,810
Hotel and resort operating income	2,104	2,073
Accretion of investment in NEG Holding LLC	7,904	8,750
NEG management fee	2,619	1,874
Dividend and other income	834	900
Equity in losses of GB Holdings, Inc.	(348)	(857)
	74,822	69,030

EXPENSES:		
Hotel and casino operating expenses	34,019	32,709
Cost of land, house and condominium sales	3,358	4,103
Hotel and resort operating expenses	2,097	2,265
Interest expense	5,919	6,361
Depreciation and amortization	5,092	4,605
General and administrative expenses	4,364	3,372
Property expenses	1,184	1,091
	56,033	54,506
OPERATING INCOME	18,789	14,524
OTHER GAINS AND (LOSSES):		
PROVISION FOR LOSS ON REAL ESTATE	--	(200)
WRITE-DOWN OF EQUITY SECURITIES AVAILABLE FOR SALE	--	(961)
GAIN ON SALES OF MARKETABLE EQUITY AND DEBT SECURITIES	28,857	--
GAIN ON SALES AND DISPOSITION OF REAL ESTATE	6,047	1,138
INCOME FROM CONTINUING OPERATIONS BEFORE INCOME TAXES	53,693	14,501
INCOME TAX EXPENSE	(4,302)	(2,878)
INCOME FROM CONTINUING OPERATIONS	49,391	11,623
DISCONTINUED OPERATIONS:		
INCOME FROM DISCONTINUED OPERATIONS	2,458	1,629
GAIN ON SALES AND DISPOSITION OF REAL ESTATE	6,929	--
INCOME FROM DISCONTINUED OPERATIONS	9,387	1,629
NET EARNINGS	$ 58,778	$ 13,252
NET EARNINGS ATTRIBUTABLE TO (Note 10):		
Limited partners	$ 57,608	$ 10,274
General partner	1,170	2,978
	$ 58,778	$ 13,252
NET EARNINGS PER LIMITED PARTNERSHIP UNIT:		
Basic earnings:		
Income from continuing operations	$ 1.05	$ 0.17
Income from discontinued operations	0.20	0.03
Basic earnings per LP unit	$ 1.25	$ 0.20
WEIGHTED AVERAGE LIMITED PARTNERSHIP UNITS OUTSTANDING	46,098,284	46,098,284
Diluted earnings:		
Income from continuing operations	$ 0.94	$ 0.15
Income from discontinued operations	0.18	0.03
Diluted earnings per LP unit	$ 1.12	$ 0.18
WEIGHTED AVERAGE LIMITED PARTNERSHIP UNITS AND EQUIVALENT PARTNERSHIP UNITS OUTSTANDING	52,499,303	55,641,655

CONSOLIDATED STATEMENTS OF CHANGES IN PARTNERS' EQUITY AND COMPREHENSIVE INCOME

	THREE MONTHS ENDED MARCH 31, 2004 (UNAUDITED) (IN $000'S)				
	GENERAL PARTNER'S EQUITY	LIMITED PARTNERS' EQUITY DEPOSITARY UNITS	HELD IN TREASURY AMOUNTS	HELD IN TREASURY UNITS	TOTAL PARTNERS' EQUITY
BALANCE, DECEMBER 31, 2003	$(19,501)	$1,184,870	$(11,921)	1,137	$1,153,448
Comprehensive income:					

Net earnings	1,170	57,608	--	--	58,778
Reversal of unrealized gains on marketable securities sold	(97)	(4,803)	--	--	(4,900)
Net unrealized gains on securities available for sale	148	7,285	--	--	7,433
Comprehensive income	1,221	60,090	--	--	61,311
BALANCE, MARCH 31, 2004	$(18,280)	$1,244,960	$(11,921)	1,137	$1,214,759

Accumulated other comprehensive income at March 31, 2004 was $11,707.

See notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS

	THREE MONTHS ENDED MARCH, 31	
	2004	2003
		(RESTATED)
	(UNAUDITED) (IN $000'S)	
CASH FLOWS FROM OPERATING ACTIVITIES:		
Income from continuing operations	$ 49,391	$ 11,623
Adjustments to reconcile net earnings to net cash provided by operating activities:		
Depreciation and amortization	5,091	4,605
Preferred LP unit interest expense	1,225	--
Gain on sales and disposition of real estate	(6,047)	(1,138)
Provision for loss on real estate	--	200
Write-down of equity securities available for sale	--	961
Gain on sales of marketable equity securities	(28,857)	--
Equity in losses of GB Holdings, Inc	348	857
Deferred gain amortization	(510)	(510)
Accretion of investment in NEG Holding LLC	(7,904)	(8,750)
Deferred income tax expense	1,615	1,491
Changes in operating assets and liabilities:		
(Increase) decrease in land and construction-in progress	(455)	1,755
Increase (decrease) in accounts payable, accrued expenses and other liabilities	10,533	(34,327)
Increase in receivables and other assets	(12,302)	(442)
Net cash provided by (used in) continuing operations	12,128	(23,675)
Income from discontinued operations	9,387	1,629
Depreciation and amortization	18	1,028
Net gain from property transactions	(6,929)	--
Net cash provided by discontinued operations	2,476	2,657
Net cash provided by (used in) operating activities	14,604	(21,018)
CASH FLOWS FROM INVESTING ACTIVITIES:		
Decrease (increase) in mortgages and notes receivable	351	(30,963)
Net proceeds from the sales and disposition of real estate	11,346	3,279
Principal payments received on leases accounted for under the financing method	1,112	1,386
Acquisitions of rental real estate	(14,583)	--

Additions to hotel, casino and resort operating property...	(1,181)	(1,139)
Additions to rental real estate.....	(166)	(76)
(Increase) decrease in investment in U.S. Government and Agency Obligations.....	(61,077)	15,398
Proceeds from sale of marketable equity and debt securities.....	64,471	--
Guaranteed payment from NEG Holding LLC.....	--	2,250
Priority distribution from NEG Holding LLC.....	--	40,506
Increase in restricted cash.....	(219,313)	--
Other.....	(50)	134
	(219,090)	30,775
Cash flows from discontinued operations:		
Net proceeds from the sales and disposition of real estate.....	7,392	--
Net cash provided by (used in) investing activities.....	(211,698)	30,775
CASH FLOWS FROM FINANCING ACTIVITIES:		
Debt:		
Proceeds from Senior Secured Notes Payable.....	215,000	--
Periodic principal payments.....	(1,738)	(2,036)
Net cash provided by (used in) financing activities.....	213,262	(2,036)
NET INCREASE IN CASH AND CASH EQUIVALENTS.....	16,168	7,721
CASH AND CASH EQUIVALENTS, BEGINNING OF PERIOD.....	467,704	54,871
CASH AND CASH EQUIVALENTS AT END OF PERIOD.....	$ 483,872	$ 62,592
SUPPLEMENTAL INFORMATION:		
Cash payments for interest.....	$ 47,637	$ 46,554
SUPPLEMENTAL SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES:		
Reclassification of real estate from operating lease.....	$ (14,353)	$ --
Reclassification from hotel and resort operating properties.....	(6,395)	--
Reclassification to properties held for sale.....	20,748	--
Reclassification of real estate to operating lease.....	--	2,158
Reclassification of real estate from financing lease.....	--	(2,158)
Reclassification from receivables and other assets.....	--	(1,631)
Reclassification to mortgages and notes receivable.....	--	1,631
Decrease in mortgages and notes receivable.....	--	(3,453)
Decrease in deferred income.....	--	2,565
Increase in real estate accounted for under the operating method.....	--	888
	$ --	$ --
Net unrealized gains on securities available for sale.....	$ 2,378	$ 1,165
Purchase of debt securities.....	$ 54,769	$ --
Distribution of note from NEG Holding LLC.....	$ --	$ 10,940

See notes to consolidated financial statements.

AMERICAN REAL ESTATE PARTNERS, L.P.
FORM 10-Q MARCH 31, 2004
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(UNAUDITED)

1. GENERAL

American Real Estate Partners, L.P. ("AREP" or the "Company") is a master limited partnership formed in Delaware on February 17, 1987. The accompanying consolidated financial statements and related footnotes should be read in conjunction with the consolidated financial statements and related footnotes

contained in the Company's annual report on Form 10-K for the year ended December 31, 2003.

The consolidated financial statements include the accounts of the Company and its majority owned subsidiaries. All material intercompany accounts and transactions have been eliminated in consolidation.

The results of operations for the three months ended March 31, 2004 are not necessarily indicative of the results to be expected for the full year. Hotel, casino and resort operations are highly seasonal in nature and are not necessarily indicative of results expected for the full year.

2. RELATED PARTY TRANSACTIONS

a. On January 5, 2004, American Casino & Entertainment Properties LLC ("American Casino"), an indirect wholly-owned subsidiary of the Company, entered into an agreement to acquire two Las Vegas casino/hotels, Arizona Charlie's Decatur and Arizona Charlie's Boulder from Carl C. Icahn ("Mr. Icahn") and an entity affiliated with Mr. Icahn, for an aggregate consideration of $125.9 million. Mr. Icahn is Chairman of the Board of American Property Investors, Inc., AREP's general partner ("API" or the "General Partner"). The closing of the acquisition is subject to certain conditions, including among other things, obtaining all approvals necessary under the gaming laws. The terms of the transactions were approved by the Audit Committee of the Board of Directors of the General Partner ("Audit Committee") which was advised by its independent financial advisor and by counsel. See Note 4. - Notes to Consolidated Financial Statements.

b. In 1997 the Company entered into a license agreement with an affiliate of the General Partner for office space. Pursuant to the license agreement, the Company has the non-exclusive use of approximately 2,275 square feet for which it pays monthly rent of $11,185 plus 10.77% of certain "additional rent." For the three months ended March 31, 2004 and 2003, the Company paid rent of approximately $39,000 and $37,000, respectively. The terms of such license agreement were reviewed and approved by the Audit Committee. The agreement expires in May 2004. If the Company must vacate the space, it believes there will be adequate alternative space available.

c. Stratosphere Corporation ("Stratosphere"), a wholly-owned subsidiary, billed the Sands Hotel and Casino, Arizona Charlie's Decatur and Arizona Charlie's Boulder approximately $0.8 million and $0.6 million for administrative services performed by Stratosphere personnel during the three months ended March 31, 2004 and 2003, respectively.

d. National Energy Group, Inc. ("NEG") received management fees from affiliates of approximately $2.6 million and $1.9 million in the three months ended March 31, 2004 and 2003, respectively.

e. In the three months ended March 31, 2004, the Company paid approximately $39,000 to an affiliate of the General Partner for telecommunications services.

f. An affiliate of the General Partner provided certain administrative services to the Company in the amount of approximately $20,000 in each of the three months ended March 31, 2004 and 2003.

g. As of May 1, 2004 affiliates of Mr. Icahn owned 8,900,995 Preferred Units and 39,896,836 Depositary Units.

3. COMMITMENTS AND CONTINGENCIES

a. In January 2002, the Cape Cod Commission (the "Commission"), a Massachusetts regional planning body created in 1989, concluded that the Company's New Seabury development proposal is within its jurisdiction for review and approval (the "Administrative Decision"). It is the Company's position that the proposed residential, commercial and recreational development is in substantial compliance with a special permit issued for the property in 1964 and is therefore exempt from the Commission's jurisdiction and that the Commission is barred from exercising jurisdiction pursuant to a 1993 settlement agreement between the Commission and a prior owner of the New Seabury property (the "Settlement Agreement").

In February 2002, New Seabury Properties L.L.C. ("New Seabury"), the

Company's subsidiary and owner of the property, filed in Barnstable County Massachusetts Superior Court, a civil complaint appealing the Administrative Decision by the Commission and a separate complaint to find the Commission in contempt of the Settlement Agreement. The Court subsequently consolidated the two complaints into one proceeding. In July 2003, New Seabury and the Commission filed cross motions for summary judgment.

Also in July 2003, in accordance with a Court ruling, the Commission reconsidered the question of its jurisdiction over the initial development proposal and over a modified development proposal that New Seabury filed in March 2003. The Commission concluded that both proposals are within its jurisdiction (the "Second Administrative Decision"). In August 2003, New Seabury filed, in Barnstable County Massachusetts Superior Court, another civil complaint appealing the Second Administrative Decision to find the Commission in contempt of the Settlement Agreement.

In November 2003, the Court ruled in New Seabury's favor on its July 2003 motion for partial summary judgment, finding that the special permit remains valid and that the modified development proposal is in substantial compliance with the special permit and therefore exempt from the Commission's jurisdiction. The Court has not yet ruled on the initial proposal. Under the modified development proposal New Seabury could potentially develop up to 278 residential units and 145,000 square feet of commercial space. In February 2004, New Seabury and the Commission jointly moved to consolidate the three complaints into one proceeding. The Court subsequently consolidated the three complaints into one proceeding. In March 2004, New Seabury moved for Summary Judgment to dispose of remaining claims under all three complaints and to obtain a final judgment from the Court. Also in March 2004, the Commission cross-moved for Summary Judgment on certain claims under each complaint. Under the initial proposal, New Seabury could potentially build up to 675 residential/hotel units and 80,000 square feet of commercial space. The Company cannot predict the effect on the development process if it loses any appeal or if the Commission is ultimately successful in asserting jurisdiction over any of the development proposals.

The carrying value of New Seabury's development assets at March 31, 2004 is approximately $9.6 million.

b. Tiffiny Decorating Company ("Tiffiny"), a subcontractor to Great Western Drywall ("Great Western"), filed a legal action against Stratosphere Corporation, Stratosphere Development, LLC, American Real Estate Holdings Limited Partnership (collectively referred to as the "Stratosphere Parties"), Great Western, Nevada Title and Safeco Insurance, Case No. A443926 in the Eighth Judicial District Court of the State of Nevada. The legal action asserts claims that include breach of contract, unjust enrichment and foreclosure of lien. The Stratosphere Parties have filed a cross-claim against Great Western in that action. Additionally, Great Western has filed a separate legal action against the Stratosphere Parties setting forth the same disputed issues and claiming additional damages. That separate action, Case No. A448299 in the Eighth Judicial Court of the State of Nevada, has been consolidated with the case brought by Tiffiny.

The initial complaint brought by Tiffiny asserts that Tiffiny performed certain construction services at the Stratosphere and was not fully paid for those services. Tiffiny claims the sum of approximately $0.5 million against Great Western, the Stratosphere Parties, and the other defendants, which the Stratosphere Parties contend has been paid to Great Western for payment to Tiffiny.

Great Western is alleging that it is owed payment from the Stratosphere Parties for work performed and for delay and disruption damages. Great Western is claiming damages in the sum of approximately

$3.9 million plus interest, costs and legal fees from the Stratosphere Parties. This amount apparently includes the Tiffiny claim.

The Stratosphere Parties have evaluated the project and have determined that the amount of $1.0 million, of which $0.2 million and $0.4 million were disbursed to Tiffiny and Great Western, respectively, is properly due and payable to satisfy all claims for the work performed, including the claim by Tiffiny. The remaining amount has been segregated in a separate interest bearing account. The Stratosphere Parties intend to vigorously defend the action for claims in excess of $1.0 million.

c. In addition, in the ordinary course of business, the Company, its subsidiaries and other companies in which the Company has invested are parties to various legal actions. In management's opinion, the ultimate outcome of such legal actions will not have a material effect on the results of operations or the financial position of the Company.

4. HOTEL, CASINO AND RESORT OPERATING PROPERTIES

On January 5, 2004, American Casino, an indirect wholly-owned subsidiary of the Company, entered into an agreement to acquire two Las Vegas casino/hotels, Arizona Charlie's Decatur and Arizona Charlie's Boulder from Carl C. Icahn and an entity affiliated with Mr. Icahn, for an aggregate consideration of $125.9 million. The closing of the acquisition is subject to certain conditions, including among other things, obtaining all approvals necessary under the gaming laws. The terms of the transaction were approved by the Audit Committee. Upon receiving all approvals necessary under gaming laws and upon closing of the acquisition, American Real Estate Holdings Limited Partnership ("AREH"), the Company's direct subsidiary, will transfer 100% of the common stock of Stratosphere to American Casino. As a result, following the acquisition and contribution, American Casino will own and operate three gaming and entertainment properties in the Las Vegas metropolitan area. In accordance with generally accepted accounting principles, assets transferred between entities under common control are accounted for at historical costs similar to a pooling of interests. Therefore, upon closing, which is anticipated in the second quarter of 2004, the Company will account for the acquisition at historical costs similar to a pooling of interests.

Also in January 2004, American Casino closed on its offering of Senior Secured Notes Due 2012. The Notes, in the aggregate principal amount of $215 million, bear interest at the rate of 7.85% per annum. The proceeds will be held in escrow pending receipt of all approvals necessary under gaming laws and certain other conditions in connection with the acquisition of Arizona Charlie's Decatur and Arizona Charlie's Boulder. American Casino intends to use the proceeds of the offering for the acquisition and to repay intercompany indebtedness and for distributions to AREH.

A. STRATOSPHERE TOWER CASINO AND HOTEL

The Company indirectly owns 100% of Stratosphere and consolidates Stratosphere in its financial statements. The Stratosphere, which offers the tallest free-standing observation tower in the United States, is situated on approximately 31 acres of land located at the northern end of the Las Vegas Strip. The facility is a tourist-oriented gaming and entertainment destination property, which has approximately 80,000 square feet of gaming space, 2,444 hotel rooms, eight restaurants and approximately 110,000 square feet of developed retail space. The Stratosphere features three of the most visible amusement rides in Las Vegas.

Stratosphere's operations for the three months ended March 31, 2004 and 2003 have been included in "Hotel and casino operating income and expenses" in the Consolidated Statements of Earnings. Hotel and casino operating expenses include all expenses except for approximately $3.4 million of depreciation and amortization for each of the three months ended March 31, 2004 and 2003 and $2.7 million and $1.4 million of income tax provision for the three months ended March 31, 2004 and 2003, respectively. The income tax provision is based on taxable income and application of an effective tax rate of approximately 35%. Such amounts have been included in "Depreciation and amortization expense" and "Income tax expense" in the Consolidated Statements of Earnings. Stratosphere accounted for approximately 61% and 59% of the Company's revenues in the three months ended March 31, 2004 and 2003 respectively, and approximately

44% and 31% of the Company's operating income in the three months ended March 31, 2004 and 2003, respectively.

B. PROPERTIES UNDER CONTRACT

ARIZONA CHARLIE'S DECATUR

Arizona Charlie's Decatur is located on approximately 17 acres of land, four miles west of the Las Vegas strip. An estimated 500,000 people live within a five-mile radius of the property. The property is easily accessible from Route

95, a major highway in Las Vegas. Arizona Charlie's Decatur contains approximately 52,000 square feet of gaming space, 258 hotel rooms, four restaurants and three bars. The property seeks to attract repeat customers from the surrounding communities. For the three months ended March 31, 2004 and 2003 Arizona Charlie's Decatur's revenues were approximately $19.2 million and $17.3 million, respectively.

ARIZONA CHARLIE'S BOULDER

Arizona Charlie's Boulder is located on approximately 24 acres of land, seven miles east of the Las Vegas strip, near an I-515 interchange. The I-515 is the most heavily traveled east/west highway in Las Vegas. An estimated 423,000 people live within a five-mile radius of the property. Arizona Charlie's Boulder contains approximately 41,000 square feet of gaming space, 303 hotel rooms, four restaurants and a 202-space recreational vehicle park. As with the Arizona Charlie's Decatur property, the property seeks to attract repeat customers from the surrounding communities. For the three months ended March 31, 2004 and 2003 Arizona Charlie's Boulder's revenues were approximately $10.1 million and $7.8 million, respectively.

The ownership and operation of the Las Vegas casinos are subject to the Nevada Gaming Control Act and regulations promulgated thereunder, various local ordinances and regulations, and are subject to the licensing and regulatory control of the Nevada Gaming Commission, the Nevada State Gaming Control Board, and various other county and city regulatory agencies, including the City of Las Vegas.

C. HOTEL AND RESORT OPERATING PROPERTIES

Hotel and resort operations for the three months ended March 31, 2004 and 2003 have been included in "Hotel and resort operating income and expenses" in the Consolidated Statements of Earnings. Hotel and resort operating expenses include all expenses except for approximately $0.7 million and $0.7 million of depreciation and amortization for the three months ended March 31, 2004 and 2003, respectively. Such amounts have been included in "Depreciation and amortization expense" in the Consolidated Statements of Earnings.

5. NATIONAL ENERGY GROUP, INC.

A. NATIONAL ENERGY GROUP, INC.

In October 2003, pursuant to a purchase agreement dated as of May 16, 2003, the Company acquired certain debt and equity securities of National Energy Group, Inc. ("NEG") from entities affiliated with Mr. Icahn for an aggregate consideration of approximately $148.1 million plus approximately $6.7 million of accrued interest on the debt securities. The agreement was reviewed and approved by the Audit Committee which was advised by its independent financial advisor and by legal counsel. The securities acquired were $148.6 million in principal amount of outstanding 10 3/4% Senior Notes due 2006 of NEG, representing all of NEG's outstanding debt securities, and approximately 5.6 million shares of common stock of NEG. As a result of the foregoing transaction and the acquisition by the Company of additional NEG common stock in the open market prior to the closing, the Company beneficially owns in excess of 50% of the outstanding common stock of NEG. AREP consolidates NEG in its financial statements. In accordance with generally accepted accounting principles, assets transferred between entities under common control are accounted for at historical costs similar to a pooling of interests, and the financial statements of previously separate companies for periods prior to the acquisition are restated on a combined basis. There is no minority interest allocated to the other NEG stockholders because of NEG's negative equity. The Company's March 31, 2003 consolidated financial statements have been restated to reflect the acquisition of NEG.

NEG owns a 50% interest in NEG Holding LLC ("NEG Holding"); the other 50% interest in NEG Holding is held by Gascon Partners ("Gascon"), an affiliate of Mr. Icahn. Gascon is the managing member of

NEG Holding. NEG Holding owns NEG Operating LLC ("NEG Operating"), which is engaged in the business of oil and gas exploration and production. Under the NEG Holding operating agreement, NEG is to receive guaranteed payments of approximately $47.9 million and a priority distribution of approximately $148.6 million before Gascon receives any distributions. Due to the substantial

uncertainty that NEG will receive any distribution above the priority and guaranteed payments amounts, NEG accounts for its investment in NEG Holding as a preferred investment.

NEG Holding is a variable interest entity. It has net assets of $175 million. The Company has determined that the Company is not the primary beneficiary of the variable interest entity. The maximum exposure to losses as a result of the Company's involvement with NEG Holding is $77 million.

In the three months ended March 31, 2004 and 2003, NEG recorded income tax provisions of $1.6 million and $1.5 million respectively, based on taxable income and applying an effective tax rate of approximately 35%.

In connection with a credit facility obtained by NEG Holding, NEG and Gascon have pledged as security their respective interests in NEG Holding.

B. INVESTMENT IN NEG HOLDING LLC

As explained below, NEG's investment in NEG Holding is recorded as a preferred investment. The initial investment was recorded at historical carrying value of the net assets contributed with no gain or loss recognized on the transfer.

Balance sheets for NEG Holding as of March 31, 2004 and December 31, 2003 are as follow:

	2004	2003
	(IN $000'S)	
Current assets	$ 38,399	$ 33,415
Noncurrent assets(1)	198,574	190,389
Total assets	$236,973	$223,804
Current liabilities	$ 13,305	$ 14,253
Noncurrent liabilities	48,464	48,514
Total liabilities	61,769	62,767
Members' equity	175,204	161,037
Total liabilities and members' equity	$236,973	$223,804

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(1) Primarily oil and gas properties

Summary income statements for NEG Holding for the three months ended March 31, 2004 and 2003 are as follows:

	2004	2003
	(IN $000'S)	
Total revenues	$25,569	$19,501
Costs and expenses	11,044	11,743
Operating income	14,525	7,758
Other income (expense)	(358)	(4,930)
Income before cumulative effect of change in accounting principle	14,167	2,828
Cumulative effect of change in accounting principle	--	1,911
Net Income	$14,167	$ 4,739

Prior to September 2001, NEG owned and operated certain oil and gas properties. Effective as of May 1, 2001, NEG contributed all of its oil and gas properties to NEG Holding. NEG recorded its investment in NEG Holding at the historical cost of the oil and gas properties that NEG contributed into the partnership (in

exchange for NEG Holding's obligation to pay NEG the priority distribution and guaranteed payments). NEG accretes its investment in NEG Holding from the initial investment recorded up to the priority distribution amount, including the guaranteed payments, at the implicit rate of interest, recognizing the accretion income in earnings. Accretion income is periodically adjusted for changes in the timing of cash flows, if necessary due to unscheduled cash distributions. Receipt of guaranteed payments and the priority distribution are recorded as reductions in the preferred investment. The preferred investment is evaluated quarterly for other than temporary impairment.

Because of the substantial uncertainty that NEG will receive any distributions in excess of the priority distribution and the guaranteed payments ("residual interest"), the residual interest attributable to the investment in NEG Holding is valued at zero. Upon payment of the priority distribution in 2006, NEG's investment in NEG Holding will be zero. Cash receipts, if any, after the priority distribution and the guaranteed payments will be reported in income as earned. The following is a roll forward of the investment in NEG Holding as of March 31, 2004:

	(IN $000'S)
Investment in NEG Holding at December 31, 2003.....	$69,346
Accretion of investment in NEG Holding.....	7,904
Investment in NEG Holding at March 31, 2004.....	$77,250

The NEG Holding Operating Agreement requires that distributions shall be made to both NEG and Gascon as follows:

1. Guaranteed payments are to be paid to NEG, calculated on an annual interest rate of 10.75% on the outstanding priority distribution amount. At March 31, 2004, the priority distribution amount was $148.6 million which equals the amount of NEG's 10.75% Senior Notes due the Company. The guaranteed payments will be made on a semi-annual basis. The priority distribution amount is to be paid to NEG by November 6, 2006.

2. An amount equal to the priority distribution amount and all guaranteed payments paid to NEG, plus any additional capital contributions made by Gascon, less any distribution previously made by NEG to Gascon, is to be paid to Gascon.

3. An amount equal to the aggregate annual interest (calculated at prime plus 1/2% on the sum of the guaranteed payments), plus any unpaid interest for prior years (calculated at prime plus 1/2% on the sum of the guaranteed payments), less any distributions previously made by NEG to Gascon, is to be paid to Gascon.

4. After the above distributions have been made, any additional distributions will be made in accordance with the ratio of NEG's and Gascon's respective capital accounts.

In addition, the NEG Holding Operating Agreement contains a provision that allows Gascon at any time, in its sole discretion, to redeem the NEG membership interest in NEG Holding at a price equal to the fair market value of such interest determined as if NEG Holding had sold all of its assets for fair market value and liquidated. Since all of NEG's operating assets and oil and natural gas properties have been contributed to NEG Holding, as noted above, following such a redemption, NEG's principal assets would consist solely of its cash balances.

6. EQUITY INTEREST IN GB HOLDINGS, INC. (SANDS HOTEL AND CASINO)

The Company reflects its pro-rata equity interest in GB Holdings, Inc. ("GBH") under this caption in the Consolidated Balance Sheets. The Company owns approximately 3.6 million shares, or 36.3%, of GBH. GBH is the holding company for the Sands Hotel and Casino (the "Sands") located in Atlantic City, New Jersey. The Sands currently consists of a casino and simulcasting facility with approximately 79,000 square feet of gaming space, a hotel with 637 rooms and related amenities.

"Equity in losses of GB Holdings, Inc." of $0.3 million and $0.9 million have been recorded in the Consolidated Statements of Earnings for the three months ended March 31, 2004 and 2003, respectively.

In July 2003, GBH announced that its Board of Directors, acting through a special committee, approved an exchange offer for the Sands debt. A wholly-owned subsidiary of GBH currently has outstanding $110 million in secured notes due in September 2005, which bear interest at 11% per annum. The proposed transaction is subject to the consent of the holders of a majority in principal amount of the existing notes, the approval of stockholders owning a majority of the common stock of GBH, the effectiveness of required filings under applicable securities laws and the receipt of all required governmental and third party approvals. Mr. Icahn and his affiliated companies hold approximately 77.5% of the GBH stock and approximately 58.2% of the existing debt, of which the Company owns approximately 36.3% of the common stock and approximately 24.5% of the debt. This debt is included in "Marketable Equity and Debt Securities" in the consolidated financial statements. The carrying value of the debt at March 31, 2004 is approximately $25 million. The Company and Mr. Icahn intend to support the proposed transaction. The proposed transaction would involve the following:

- An amendment to the existing note indenture to remove certain provisions and covenants and release the liens on the Sands assets; thereby allowing the transfer of these assets and those now held at GBH to a wholly-owned indirect subsidiary of GBH, Atlantic Coast Entertainment Holdings, Inc. ("Atlantic Holdings").

- The solicitation of an exchange of the existing notes for new notes due September 2008, which will bear interest at 3% per annum payable at maturity.

- The payment of $100 per $1,000 in principal amount of the existing notes exchanged plus accrued interest on the existing notes.

- The holders of a majority of the new notes will have an option to convert all such notes into 72.5% of the Atlantic Holdings stock if all of the existing notes participate in the exchange.

- The distribution to the GBH common stockholders of warrants (following the occurrence of certain events) for 27.5% of the common stock of Atlantic Holdings (on a fully diluted basis).

This transaction is not expected to have a significant impact on the Company's consolidated financial statements.

7. MARKETABLE EQUITY AND DEBT SECURITIES

In December 2003, the Company acquired approximately $86.9 million principal amount of corporate bonds for approximately $45.1 million. Such bonds were classified as available for sale securities. Available for sale securities are carried at fair value on the Balance Sheet. Unrealized holding gains and losses are excluded from earnings and reported as a separate component of Partners' Equity. At December 31, 2003, the carrying value of the bonds was approximately $51.6 million and accumulated other comprehensive gain was approximately $6.5 million. In the first quarter of 2004, the Company sold bonds for which the cost basis was approximately $35.6 million for approximately $64.5 million, recognizing a gain of approximately $28.9 million for the three months ended March 31, 2004. At March 31, 2004, the carrying value of the remaining bonds was approximately $17.8 million, the cost basis was approximately $9.5 million and accumulated other comprehensive gain with respect to the bonds was approximately $8.3 million. In April 2004, the Company sold the remaining bonds for approximately $17.8 million realizing a gain of approximately $8.3 million which will be recognized in the three and six months ended June 30, 2004.

8. MORTGAGES AND NOTES RECEIVABLE

a. On March 30, 2004, the Company agreed to purchase approximately $63.5 million principal amount of secured bank indebtedness of a bankrupt company for a purchase price of approximately $54.7 million. In April 2004, the Company entered into a trade confirmation effective March 30, 2004. At March 31, 2004, the

Company reflected the purchase liability in "Liability for purchased securities" on the Consolidated Balance Sheets. The trade settled on April 30, 2004; the Company paid cash for the securities.

b. The Company has provided development financing for certain real estate projects. The security for these loans is a pledge of the developers' ownership interest in the properties. Such loans are subordinate to construction financing and are generally referred to as mezzanine loans. The Company's mezzanine loans accrue interest at approximately 22% per annum. However, interest generally is not paid periodically and is due at maturity or earlier from unit sales or refinancing proceeds. The Company defers recognition of interest income on mezzanine loans pending receipt of principal and interest payments. At March 31, 2004, the Company had funded two mezzanine loans in the principal amount of approximately $42 million and had commitments to fund, under certain conditions, additional advances of approximately $15 million. At March 31, 2004, the Company had deferred the recognition of approximately $13.9 million of accrued interest income for financial statement purposes, in connection with these loans.

c. At March 31, 2004, the Company had one second mortgage loan in the principal amount of $7 million which bears interest at 20% per annum payable monthly.

9. SENIOR SECURED NOTES PAYABLE

In January 2004, American Casino closed on its offering of Senior Secured Notes Due 2012. The Notes, in the aggregate principal amount of $215 million, bear interest at the rate of 7.85% per annum. The proceeds are being held in escrow pending receipt of all approvals necessary under gaming laws and certain other conditions in connection with the acquisition of Arizona Charlie's Decatur and Boulder. American Casino intends to use the proceeds of the offering for the acquisition and to repay intercompany indebtedness and for distributions to AREH. The notes will be recourse only to, and will be secured by a lien on the assets of, American Casino and its subsidiaries. The notes will restrict the ability of those companies, subject to the exceptions set forth in the notes, to: incur additional debt; pay dividends and make distributions; make certain investments; repurchase stock; create liens; enter into transactions with affiliates; enter into sale and leaseback transactions; merge or consolidate; and transfer, lease or sell assets. At March 31, 2004, the gross proceeds of the offering plus accrued interest paid is being held in escrow and included on the Consolidated Balance Sheets as "Restricted Cash." For the three months ended March 31, 2004, $3 million of interest expense is included in "interest expense" in the Consolidated Statement of Earnings.

10. PREFERRED UNITS

Pursuant to the terms of the Preferred Units, on February 25, 2004, the Company declared its scheduled annual preferred unit distribution payable in additional Preferred Units at the rate of 5% of the liquidation preference of $10. The distribution was payable March 31, 2004 to holders of record as of March 12, 2004. A total of 489,657 additional Preferred Units were issued. At March 31, 2004, 10,286,264 Preferred Units are issued and outstanding. In February 2004, the number of authorized Preferred Units was increased to 10,400,000.

The Preferred Units have certain rights and designations, generally as follows: each Preferred Unit has a liquidation preference of $10.00 and entitles the holder thereof to receive distributions thereon, payable solely in additional Preferred Units, at the rate of $.50 per preferred unit per annum (which is equal to a rate of 5% of the liquidation preference thereof), payable annually on March 31, of each year (each, a "Payment Date"). On any Payment Date commencing with the Payment Date on March 31, 2000, the Company with the approval of the Audit Committee of the Board of Directors of the General Partner may opt to redeem all, but not less than all, of the Preferred Units for a price, payable either in all cash or by issuance of additional Depositary Units, equal to the liquidation preference of the Preferred Units, plus any accrued but

unpaid distributions thereon. On March 31, 2010, the Company must redeem all, but not less than all, of the Preferred Units on the same terms as any optional redemption.

On July 1, 2003, the Company adopted Statement of Financial Accounting Standards No. 150 (SFAS 150) "Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity". SFAS 150 requires that a financial instrument, which is an unconditional obligation, be classified as a liability.

Previous guidance required an entity to include in equity financial instruments that the entity could redeem in either cash or stock. Pursuant to SFAS 150 the Company's Preferred Units, which are an unconditional obligation, have been reclassified from "Partners' equity" to a liability account in the Consolidated Balance Sheets and from July 1, 2003, the preferred pay-in-kind distribution has been recorded as "Interest expense" in the Consolidated Statements of Earnings.

11. EARNINGS PER SHARE

Basic earnings per share are based on earnings which is net of the preferred pay-in-kind distribution to Preferred Unitholders, which was $1.2 million in the three months ended March 31, 2003. The resulting net earnings available for limited partners are divided by the weighted average number of shares of limited partnership units outstanding.

Diluted earnings per share is based on earnings before the preferred pay-in-kind distribution as the numerator with the denominator based on the weighted average number of units and equivalent units outstanding. The Preferred Units are considered to be equivalent units. The number of limited partnership units used in the calculation of diluted income per limited partnership unit increased by 6,401,019 and 9,543,371 in the three months ended March 31, 2004 and 2003, respectively, to reflect the potential conversion of preferred units.

12. COMPREHENSIVE INCOME

The components of comprehensive income include net income and certain other amounts reported directly in equity.

Comprehensive income for the three months ended March 31, 2004 and 2003 is as follows (in $000's):

	THREE MONTHS ENDED MARCH 31,	
	2004	2003
		(RESTATED)
Net income	$58,778	$13,252
Net unrealized gains on securities available for sale	7,433	1,926
Reversal of unrealized gains on marketable securities sold	(4,900)	--
Comprehensive income	$61,311	$15,178

13. SEGMENT REPORTING

The Company has six operating segments consisting of: (i) hotel and casino operating properties, (ii) land, house and condominium development, (iii) rental real estate, (iv) hotel and resort operating properties, (v) investment in oil and gas operating properties and (vi) investment in securities including investment in other limited partnerships and marketable equity and debt securities. The Company's reportable segments offer different services and require different operating strategies and management expertise. There have been no material changes in segment assets since December 31, 2003.

The Company assesses and measures segment operating results based on segment earnings from operations as disclosed below. Segment earnings from

operations are not necessarily indicative of cash available to fund cash requirements nor synonymous with cash flow from operations.

The revenues and net earnings for each of the reportable segments are summarized as follows for the three months ended March 31, 2004 and 2003 (in $000's):

	THREE MONTHS MARCH 31,	
	2004	2003
		(RESTATED)
Revenues:		
Hotel and casino operating income	$45,367	$ 39,785
Land, house and condominium sales	5,014	4,860
Rental real estate	6,097	6,228
Hotel and resort operating income	2,104	2,073
Oil and gas operating properties	10,523	10,624
Other investments	4,564	4,344
Subtotal	73,669	67,914
Reconciling items--primarily interest income on U.S. Government obligations	1,153	1,116
Total revenues	$74,822	$ 69,030
Net earnings (loss):		
Segment earnings:		
Hotel and casino operating properties	$11,348	$ 7,076
Land, house and condominium development	1,656	757
Rental real estate	4,913	5,137
Hotel and resort operating properties	7	(192)
Oil and gas operating properties	10,523	10,624
Other investments	4,564	4,344
Total segment earnings	33,011	27,746
Gain on sale of marketable equity securities	28,857	--
Gain on sales and disposition of real estate	6,047	1,138
Income from discontinued operations	9,387	1,629
Other expenses, net	(18,524)	(17,261)
General partner's share of net income	(1,170)	(2,978)
Net earnings limited partner unitholders	$57,608	$ 10,274

14. SIGNIFICANT PROPERTY TRANSACTIONS

Due to favorable real estate market conditions and the mature nature of the Company's real estate portfolio, AREP has engaged C.B. Richard Ellis, Inc. to assist it in obtaining offers for its rental real estate portfolio. AREP intends to utilize proceeds from any asset sales to continue to invest in our core businesses, including real estate, gaming and entertainment and oil and gas. We may also seek opportunities in other sectors including industrial, manufacturing and insurance and asset management. In total, the Company is marketing for sale properties with a book value of approximately $340 million individually encumbered by mortgage debt which in the aggregate is approximately $179 million at March 31, 2004. There can be no assurance that offers satisfactory to AREP will be received and, if received, that the properties will ultimately be sold at prices acceptable to AREP.

At March 23, 2004, the Company had 40 properties under contract or as to which letters of intent had been executed by potential purchasers, all of which contracts or letters of intent are subject to purchaser's due diligence and other closing conditions. Selling prices for the properties covered by the contracts or letters of intent would total approximately $323 million but the properties are encumbered by aggregate mortgage debt

of approximately $142 million which would have to be repaid out of the proceeds of the sales or assumed by the purchaser. At March 31, 2004, the carrying value of these properties is approximately $226 million. In 2003, net income from these properties totaled approximately $7 million; interest expense was approximately $11 million; and depreciation and amortization expense was approximately $4.2 million. In accordance with generally accepted accounting principles, only the real estate operating properties under contract or letter of intent, but not the financing lease properties, were reclassified to "Properties Held for Sale" and the related income and expense reclassified to "Income from Discontinued Operations."

In January 2004, the Company sold five properties to Alabama Power, its tenant, for approximately $10.9 million, recognizing a gain of approximately $6.0 million. Also in January 2004, AREP sold a grocery-anchored shopping center located in Audubon, New Jersey for approximately $7.3 million, recognizing a gain of approximately $6.8 million.

In conjunction with AREP's reinvestment program, in January 2004, the Company purchased a 34,422 square foot commercial condominium unit located in New York City for approximately $14.5 million. The unit contains a Citibank branch, a furniture store and a restaurant. The annual net operating income is anticipated to be approximately $1 million. AREP obtained financing of $10 million for this property in April 2004.

15. SUBSEQUENT EVENTS

a. On May 7, 2004, the Company announced that it priced the offering of senior notes due 2012 in a private placement transaction. The notes, in the aggregate principal amount of $353 million, and priced at 99.266%, will bear interest at a rate of 8.125% per annum. Net proceeds from the offering will be used for general business purposes, including to pursue AREP's primary business strategy of acquiring undervalued assets in either its existing lines of business or other businesses and to provide additional capital to grow its existing businesses.

b. On April 30, 2004, the Company received approximately $16.2 million for the prepayment of a mezzanine loan. The principal amount of the loan was $11 million and the prepayment included deferred interest. The Company defers recognition of interest income on mezzanine loans pending receipt of principal and interest payment; therefore, the interest portion of the prepayment of $5.2 million will be recognized as income in the Consolidated Statements of Earnings for the three and six months ended June 30, 2004.

c. In April, the Company sold nine properties for approximately $31.3 million which were encumbered by mortgage debt of approximately $6.6 million. The carrying value of the properties was approximately $19.1 million; therefore, the Company will recognize a gain of approximately $12.2 million in discontinued operations in the three and six months ended June 30, 2004.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Statements included in Management's Discussion and Analysis of Financial Condition and Results of Operations which are not historical in nature, are intended to be, and are hereby identified as, "forward looking statements" for purposes of the safe harbor provided by Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended by Public Law 104-67.

Forward-looking statements regarding management's present plans or expectations involve risks and uncertainties and changing economic or competitive conditions, as well as the negotiation of agreements with third parties, which could cause actual results to differ from present plans or expectations, and such differences could be material. Readers should consider that such statements speak only as of the date hereof.

We are a diversified holding company engaged in a variety of businesses. Our primary business strategy is to seek to acquire undervalued assets and companies that are distressed or out of favor. Our businesses currently include rental real estate; real estate development; hotel and resort operations; hotel and casino operations; investments in equity and debt securities; and oil and gas exploration and production. We intend to continue to invest in our core

businesses, including real estate, gaming and entertainment, and oil and gas. We

may also seek opportunities in other sectors, including energy, industrial manufacturing and insurance and asset management.

To capitalize on favorable real estate market conditions and the mature nature of our commercial real estate portfolio, we have engaged C.B. Richard Ellis, Inc. to assist us in offering for sale our rental real estate portfolio.

RESULTS OF OPERATIONS

THREE MONTHS ENDED MARCH 31, 2004 COMPARED TO THREE MONTHS ENDED MARCH 31, 2003

Gross revenues increased by $5.8 million, or 8.4%, during the three months ended March 31, 2004 as compared to the same period in 2003. This increase reflects increases of $5.1 million in hotel and casino operating income, $0.7 million in NEG management fees, $0.5 million in equity in earnings of GB Holdings, Inc., or GBH, $0.3 million in rental income, $0.3 million in interest income on U.S. government and agency obligations and other investments, $0.2 million in land, house and condominium sales and $31,000 in hotel and resort operating income partially offset by decreases of $0.8 million in accretion of investment in NEG Holding LLC, $0.5 million in financing lease income and $66,000 in dividend and other income. The increase in hotel and casino operating income is primarily attributable to an increase in casino, hotel, food and beverage and other revenues. NEG management fees increased primarily due to management fees received from the TransTexas Gas Corporation. The increase in equity in earnings of GBH is primarily due to increased casino revenue and decreased promotional allowances. Rental income increased primarily due to a property acquisition and rent increases from tenants. The decrease in accretion of investment in NEG Holding LLC is primarily due to a priority distribution amount received in 2003. The decrease in financing lease income is primarily due to property sales and normal lease amortization.

Expenses increased by $1.5 million, or 2.8%, during the three months ended March 31, 2004 as compared to the same period in 2003. This increase reflects increases of $1.3 million in hotel and casino operating expenses, $1.0 million in general and administrative expenses, $0.5 million in depreciation and amortization and $93,000 in property expenses partially offset by decreases of $0.7 million in cost of land, house and condominium expenses, $0.4 million in interest expense and $0.2 million in hotel and resort operating expenses. The increase in hotel and casino operating expenses is primarily attributable to increased costs associated with increased revenues. Hotel and casino operating expenses as a percentage of revenues decreased from 80% in 2003 to 74% in 2004. The increase in general and administrative expenses is primarily due to expenses incurred in connection with the increase in NEG management fees. The increase in depreciation and amortization is primarily due to a property acquisition and reclassifications of financing leases. The decrease in cost of land, house and condominium expenses is primarily attributable to higher margin sales. Land, house and condominium expenses as a percentage of revenues decreased from 84% in 2003 to 67% in 2004. The decrease in interest expense is primarily attributable to the decrease in NEG interest expense partially offset by the increased interest expense related to the preferred limited partnership units and the senior secured notes payable of American Casino. NEG interest expense decreased primarily due to the Company's acquisition of NEG's debt in October 2003.

Operating income increased during the three months ended March 31, 2004 by $4.3 million as compared to the same period in 2003 as detailed above.

Earnings from land, house and condominium operations increased in the three months ended March 31, 2004 compared to the same period in 2003 due to the sale of higher margin properties. Based on current information, sales are expected to increase moderately during 2004 as compared to 2003. However, municipal approval of land inventory or the purchase of approved land is required to continue this upward trend into 2005 and beyond.

Earnings from hotel, casino and resort properties increased during the three months ended March 31, 2004 due to increased revenues throughout the property.

Gain on property transactions from continuing operations increased by $4.9 million during the three months ended March 31, 2004 as compared to the same period in 2003.

A provision for loss on real estate of $0.2 million was recorded in the three months ended March 31, 2003. No such provision was recorded in 2004.

A gain on sale of marketable equity securities of $28.9 million was recorded in the three months ended March 31, 2004. There were no such gains in the comparable period of 2003.

A write-down of equity securities available for sale of $0.9 million was recorded in the three months ended March 31, 2003. There was no such write-down in 2004.

Income from continuing operations before income taxes increased by $39.2 million in the three months ended March 31, 2004 as compared to the same period in 2003 as detailed above.

Income tax expense of $4.3 million was recorded in the three months ended March 31, 2004 as compared to $2.9 million in 2003.

Income from continuing operations increased by $37.8 million in the three months ended March 31, 2004 as compared to the same period in 2003 as detailed above.

Income from discontinued operations increased by $7.7 million in the three months ended March 31, 2004 as compared to the same period in 2003 due to gains on property dispositions.

Net earnings for the three months ended March 31, 2004 increased by $45.5 million as compared to the three months ended March 31, 2003 primarily due to a gain on sale of marketable equity securities ($28.9 million), increased income from discontinued operations ($7.7 million), increased gain on property dispositions from continuing operations ($4.9 million) and increased net hotel and casino operating income ($3.8 million).

CAPITAL RESOURCES AND LIQUIDITY

Net cash provided by operating activities was $14.6 million for the three months ended March 31, 2004 as compared to $21.0 million used in operating activities in the comparable period of 2003. This increase resulted primarily from NEG's payment of accounts payable and accrued liabilities in 2003 ($37.7 million) partially offset by a decrease in cash flow from other operations ($2.1 million).

The following table reflects our contractual cash obligations, subject to certain conditions, due over the indicated periods and when they come due (in $ millions):

	LESS THAN 1 YEAR	1-3 YEARS	4-5 YEARS	AFTER 5 YEARS	TOTAL(1)
Mortgages payable	$ 6.5	$14.4	$72.2	$ 86.2	$179.3
Mezzanine loan commitments	15.0	--	--	--	15.0
Acquisition of debt securities	54.7	--	--	--	54.7
Senior secured notes payable	--	--	--	215.0	215.0
Construction and development obligations	30.0	--	--	--	30.0
Total	$106.2	$14.4	$72.2	$301.2	$494.0

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(1) In addition, see Note 10 for preferred limited partnership redemption.

On January 5, 2004, American Casino, an indirect wholly-owned subsidiary of the Company, entered into an agreement to acquire two Las Vegas casino/hotels, Arizona Charlie's Decatur and Arizona Charlie's Boulder, from Carl C. Icahn and an entity affiliated with Icahn, for aggregate consideration of $125.9 million. The closing of the acquisition is subject to certain conditions, including,

among other things, obtaining all approvals necessary under the gaming laws. The terms of the transaction were approved by the Audit Committee. Upon receiving all approvals necessary under gaming laws and upon closing of the acquisition,

AREH will transfer 100% of the common stock of Stratosphere to American Casino. As a result, following the acquisition and contribution, American Casino will own and operate three gaming and entertainment properties in the Las Vegas metropolitan area.

Also in January 2004, American Casino closed on its offering of senior secured notes due 2012. The notes, in the aggregate principal amount of $215 million, bear interest at the rate of 7.85% per annum. The proceeds are being held in escrow pending receipt of all approvals necessary under gaming laws and certain other conditions in connection with the acquisition of Arizona Charlie's Decatur and Boulder. American Casino intends to use the proceeds of the offering for the acquisition and to repay intercompany indebtedness and for distributions to AREH.

At March 23, 2004, we had 40 properties under contract or as to which letters of intent had been executed by the potential purchaser, all of which contracts or letters of intent are subject to purchaser's due diligence and other closing conditions. Selling prices for the properties covered by the contracts or letters of intent would total approximately $323 million but the properties are encumbered by aggregate mortgage debt of approximately $142 million which would have to be repaid out of the proceeds of the sales or would be assumed by purchasers.

On May 7, 2004, we announced that we priced the offering of senior notes due 2012 in a private placement transaction. The notes, in the aggregate principal amount of $353 million, and priced at 99.266%, will bear interest at a rate of 8.125% per annum. Net proceeds from the offering will be used for general business purposes, including to pursue our primary business strategy of acquiring undervalued assets in either our existing lines of business or other businesses and to provide additional capital to grow our existing businesses.

On March 15, 2004, we announced that no distributions on our depositary units are expected to be made in 2004. We continue to believe that we should continue to hold and invest, rather than distribute, cash. We intend to continue to apply available cash flow toward its operations, repayment of maturing indebtedness, tenant requirements, investments, acquisitions and other capital expenditures.

The types of investments we are pursuing, include assets that may not be readily financeable or generate positive cash flow, such as development properties, non-performing mortgage loans or securities of companies which may be undergoing restructuring or require significant capital investments, require us to maintain a strong capital base in order to own, develop and reposition these assets.

Net proceeds from the sale or disposal of portfolio properties totaled approximately $18.7 million in the three months ended March 31, 2004. During the comparable period of 2003, sales proceeds totaled approximately $3.3 million. The Company intends to use asset sales, financing and refinancing proceeds for new investments.

Capital expenditures for real estate, and hotel, casino and resort operations were approximately $1.3 million and $1.2 million during the three months ended March 31, 2004 and 2003, respectively. In 2004, capital expenditures are currently expected to be approximately $10 million. In the three months ended March 31, 2004, we acquired a property for approximately $14.6 million.

During the three months ended March 31, 2004 and 2003, approximately $1.7 million and $2.0 million, respectively, of mortgage principal payments were repaid.

Our cash and cash equivalents and investment in U.S. government and agency obligations increased by $77.2 million during the three months ended March 31, 2004 primarily due to proceeds from the sale of marketable equity securities ($64.4 million), property sales proceeds ($18.7 million) and net cash flow from operations ($14.6 million) partially offset by rental real estate acquisition ($14.6 million), capital expenditures ($1.3 million) and miscellaneous other

items ($4.6 million).

CERTAIN TRENDS AND UNCERTAINTIES

In addition to certain trends and uncertainties described elsewhere in this report, we are subject to the trends and uncertainties set forth below.

RISKS RELATING TO OUR BUSINESS

REAL ESTATE

OUR INVESTMENT IN PROPERTY DEVELOPMENT MAY BE MORE COSTLY THAN ANTICIPATED.

We have invested and expect to continue to invest in unentitled land, undeveloped land and distressed development properties. These properties involve more risk than properties on which development has been completed. Unentitled land may not be approved for development. Undeveloped land and distressed development properties do not generate any operating revenue, while costs are incurred to develop the properties. In addition, undeveloped land and development properties incur expenditures prior to completion, including property taxes and development costs. Also, construction may not be completed within budget or as scheduled and projected rental levels or sales prices may not be achieved and other unpredictable contingencies beyond our control could occur. We will not be able to recoup any of such costs until such time as these properties, or parcels thereof, are either disposed of or developed into income-producing assets.

COMPETITION FOR ACQUISITIONS COULD ADVERSELY AFFECT US AND NEW ACQUISITIONS MAY FAIL TO PERFORM AS EXPECTED.

We seek to acquire investments that are undervalued. Acquisition opportunities in the real estate market for value-added investors have become competitive to source and the increased competition may have some impact on the spreads and the ability to find quality assets that provide returns that we seek. These investments may not be readily financeable and may not generate immediate positive cash flow for us. There can be no assurance that any asset we acquire, whether in the real estate sector or otherwise, will increase in value or generate positive cash flow.

WE MAY NOT BE ABLE TO SELL OUR RENTAL PROPERTIES, WHICH WOULD REDUCE CASH AVAILABLE FOR INVESTMENTS.

We are currently marketing for sale properties with a book value aggregating approximately $340 million, which are individually encumbered by mortgage debt which, in the aggregate, totals approximately $179 million at March 31, 2004. We may not be successful in obtaining purchase offers at acceptable prices and sales may not be consummated. If we do not sell this real estate, we will not pay off the mortgages associated with these properties which would reduce the amount we could borrow for other purposes. By the end of 2006, net leases representing approximately 22% of our net annual rentals from our real estate portfolio, or approximately 3.2% of our total revenues for 2003, will be due for renewal, and by the end of 2008, net leases representing approximately 31% of our net annual rentals, or approximately 4.6% of our total revenues for 2003, will be due for renewal. Since many of our properties are net-leased to single corporate tenants, it may be difficult to sell those properties that existing tenants decline to re-let. Our attempt to market the real estate portfolio may not be successful. Even if our efforts are successful, we cannot be certain that the proceeds from the sales can be used to acquire businesses and investments at prices or at projected returns which are deemed favorable.

WE FACE POTENTIAL ADVERSE EFFECTS FROM TENANT BANKRUPTCIES OR INSOLVENCIES.

The bankruptcy or insolvency of our tenants may adversely affect the income produced by our properties. If a tenant defaults, we may experience delays and incur substantial costs in enforcing our rights as landlord. If a tenant files for bankruptcy, we cannot evict the tenant solely because of such bankruptcy. A court, however, may authorize a tenant to reject or terminate its lease with us.

THE DEVELOPMENT OF OUR NEW SEABURY PROPERTY MAY BE LIMITED BY GOVERNMENT AUTHORITIES.

We continue to pursue the approval and development of our New Seabury

property in Cape Cod, Massachusetts. The development plans have been opposed by the Cape Cod Commission. We have appealed its administrative decision asserting jurisdiction over the development and a Massachusetts Superior Court ruled that a development proposal for up to 278 residential units was exempt from the Commission's jurisdiction. However, the Court has not ruled with respect to our initial proposal to build up to 675

residential/hotel units. We cannot predict the effect on our development of the property if we lose any appeal from the Court's decision or if the Commission is ultimately successful in asserting jurisdiction over any of the development proposals.

WE MAY BE SUBJECT TO ENVIRONMENTAL LIABILITY.

Under various federal, state and local laws, ordinances and regulations, an owner or operator of real property may become liable for the costs of removal or remediation of certain hazardous substances, pollutants and contaminants released on, under or in its property. These laws often impose liability without regard to whether the owner or operator knew of, or was responsible for, the release of such substances. To the extent any such substances are found in or on any property invested in by us, we could be exposed to liability and be required to incur substantial remediation costs. The presence of such substances or the failure to undertake proper remediation may adversely affect the ability to finance, refinance or dispose of such property. We generally conduct a Phase I environmental site assessment on properties in which we are considering investing. A Phase I environmental site assessment involves record review, visual site assessment and personnel interviews, but does not typically include invasive testing procedures such as air, soil or groundwater sampling or other tests performed as part of a Phase II environmental site assessment. Accordingly, there can be no assurance that these assessments will disclose all potential liabilities or that future property uses or conditions or changes in applicable environmental laws and regulations or activities at nearby properties will not result in the creation of environmental liabilities with respect to a property.

HOTEL AND CASINO OPERATIONS

THE GAMING INDUSTRY IS HIGHLY REGULATED. THE GAMING AUTHORITIES AND STATE AND MUNICIPAL LICENSING AUTHORITIES HAVE SIGNIFICANT CONTROL OVER OUR OPERATIONS.

Our properties currently conduct licensed gaming operations in Nevada and New Jersey. Various regulatory authorities, including the Nevada State Gaming Control Board, Nevada Gaming Commission and the New Jersey Casino Control Commission, require our properties to hold various licenses and registrations, findings of suitability, permits and approvals to engage in gaming operations and to meet requirements of suitability. These gaming authorities also control approval of ownership interests in gaming operations. These gaming authorities may deny, limit, condition, suspend or revoke our gaming licenses, registrations, findings of suitability or the approval of any of our ownership interests in any of the licensed gaming operations conducted in Nevada and New Jersey, any of which could have a significant adverse effect on our business, financial condition and results of operations, for any cause they may deem reasonable. If we violate gaming laws or regulations that are applicable to us, we may have to pay substantial fines or forfeit assets. If, in the future, we operate or have an ownership interest in casino gaming facilities located outside of Nevada or New Jersey, we may also be subject to the gaming laws and regulations of those other jurisdictions.

The sale of alcoholic beverages at our Nevada properties is subject to licensing and regulation by the City of Las Vegas and Clark County, Nevada. The City of Las Vegas and Clark County have full power to limit, condition, suspend or revoke any such license, and any such disciplinary action may, and revocation would, reduce the number of visitors to our Nevada casinos to the extent the availability of alcoholic beverages is important to them. Changes in ownership arising from the acquisition by American Casino of the Arizona Charlie's casinos will require the approval of the City of Las Vegas and Clark County, Nevada in order for the applicable alcoholic beverage license to remain in effect. The acquisition may not receive the required approvals. If our alcohol licenses become in any way impaired, it would negatively impact our visitation levels. Any reduction in our number of visitors will reduce our revenue and cash flow.

WE HAVE NOT RECEIVED NECESSARY GAMING APPROVALS IN CONNECTION WITH THE

ACQUISITIONS OF THE ARIZONA CHARLIE'S CASINOS.

We have not received the necessary gaming approvals in connection with the acquisitions of the Arizona Charlie's casinos. Pending receipt of all necessary approvals, the net proceeds of the American Casino notes are being held in an escrow account. If the gaming approvals are not obtained and certain other conditions are

not satisfied on or before August 31, 2004, the American Casino notes are required to be redeemed at a price equal to 100% of the principal amount plus accrued interest. Of the proceeds of the American Casino offering, we are to receive an aggregate of approximately $82 million from the payment of American Casino intercompany debt and distributions. If the notes are required to be redeemed, it will reduce cash and equivalents that would have been available to us.

RISING OPERATING COSTS FOR OUR GAMING AND ENTERTAINMENT PROPERTIES COULD HAVE A NEGATIVE IMPACT ON OUR PROFITABILITY.

The operating expenses associated with our gaming and entertainment properties could increase due to some of the following factors:

- Potential changes in the tax or regulatory environment which impose additional restrictions or increase operating costs;

- Our properties use significant amounts of electricity, natural gas and other forms of energy, and energy price increases may reduce our working capital;

- Our properties use significant amounts of water and a water shortage may adversely affect our operations;

- An increase in the cost of health care benefits for our employees could have a negative impact on our profitability;

- Some of our employees are covered by collective bargaining agreements and we may incur higher costs or work slow-downs or stoppages due to union activities;

- Our reliance on slot machine revenues and the concentration of manufacturing of slot machines in certain companies could impose additional costs on us; and

- Our insurance coverage may not be adequate to cover all possible losses and our insurance costs may increase.

WE FACE SUBSTANTIAL COMPETITION IN THE HOTEL AND CASINO INDUSTRY.

The hotel and casino industry in general, and the markets in which we compete in particular, are highly competitive.

- We compete with many world class destination resorts with greater name recognition, different attractions, amenities and entertainment options.

- We compete with the continued growth of gaming on Native American tribal lands, particularly in California.

- The existence of legalized gambling in other jurisdictions may reduce the number of visitors to our properties.

- Certain states have legalized, and others may legalize, casino gaming in specific venues, including race tracks and/or in specific areas, including metropolitan areas from which we traditionally attract customers, including Los Angeles, San Francisco and New York.

- Our properties also compete and will in the future compete with all forms of legalized gambling.

Many of our competitors have greater financial, selling and marketing, technical and other resources than we do. We may not be able to compete effectively with our competitors and we may lose market share, which could reduce our revenue and cash flow.

ECONOMIC DOWNTURNS, TERRORISM AND THE UNCERTAINTY OF WAR, AS WELL AS OTHER FACTORS AFFECTING DISCRETIONARY CONSUMER SPENDING, COULD REDUCE THE NUMBER OF OUR VISITORS OR THE AMOUNT OF MONEY VISITORS SPEND AT OUR CASINOS.

The strength and profitability of our hotel and casino business depends on consumer demand for hotel-casino resorts and gaming in general and for the type of amenities we offer. Changes in consumer preferences or discretionary consumer spending could harm our business.

During periods of economic contraction, our hotel and casino revenues may decrease while some of our costs remain fixed, resulting in decreased earnings. This is because the gaming and other leisure activities we offer at our properties are discretionary expenditures, and participation in these activities may decline during economic downturns because consumers have less disposable income. Even an uncertain economic outlook may adversely affect consumer spending in our gaming operations and related facilities, as consumers spend less in anticipation of a potential economic downturn. Additionally, rising gas prices could deter non-local visitors from traveling to our properties.

The terrorist attacks which occurred on September 11, 2001, the potential for future terrorist attacks and wars in Afghanistan and Iraq have had a negative impact on travel and leisure expenditures, including lodging, gaming and tourism. Leisure and business travel, especially travel by air, remain particularly susceptible to global geopolitical events. Many of the customers of our properties travel by air, and the cost and availability of air service can affect our business. Furthermore, insurance coverage against loss or business interruption resulting from war and some forms of terrorism may be unavailable or not available on terms that we consider reasonable. We cannot predict the extent to which war, future security alerts or additional terrorist attacks may interfere with our operations.

INVESTMENTS

WE MAY NOT BE ABLE TO IDENTIFY SUITABLE INVESTMENTS.

Our partnership agreement allows us to take advantage of investment opportunities we believe exist outside of the real estate market. The equity securities in which we may invest may include common stocks, preferred stocks and securities convertible into common stocks, as well as warrants to purchase these securities. The debt securities in which we may invest may include bonds, debentures, notes, or non-rated mortgage-related securities, municipal obligations, bank debt and mezzanine loans. Certain of these securities may include lower rated or non-rated securities which may provide the potential for higher yields and therefore may entail higher risk and may include the securities of bankrupt or distressed companies. In addition, we may engage in various investment techniques, including derivatives, options and futures transactions, foreign currency transactions, "short" sales and leveraging for either hedging or other purposes. We may concentrate our activities by owning one or a few businesses or holdings, which would increase our risk. We may not be successful in finding suitable opportunities to invest our cash and our strategy of investing in undervalued assets may expose us to numerous risks.

OUR INVESTMENTS MAY BE SUBJECT TO SIGNIFICANT UNCERTAINTIES.

Our investments may not be successful for many reasons including, but not limited to:

- Fluctuation of interest rates;
- Lack of control in minority investments;
- Worsening of general economic and market conditions;
- Lack of diversification;
- Inexperience with non-real estate areas;
- Fluctuation of U.S. dollar exchange rates; and
- Adverse legal and regulatory developments that may affect particular businesses.

OIL AND GAS

WE FACE SUBSTANTIAL RISKS IN THE OIL AND GAS INDUSTRY.

The exploration for and production of oil and gas involves numerous risks. The cost of drilling, completing and operating wells for oil or gas is often uncertain, and a number of factors can delay or prevent drilling operations or production, including:

- unexpected drilling conditions;
- pressure or irregularities in formation;
- equipment failures or repairs;
- fires or other accidents;
- adverse weather conditions;
- pipeline ruptures or spills; and
- shortages or delays in the availability of drilling rigs and the delivery of equipment.

THE OIL AND GAS INDUSTRY IS HIGHLY REGULATED AND FEDERAL, STATE AND MUNICIPAL LICENSING AUTHORITIES HAVE SIGNIFICANT CONTROL OVER OUR OPERATIONS.

The oil and gas industry is subject to extensive legislation and regulation, which is under constant review for amendment or expansion. Any changes may affect, among other things, the pricing or marketing of oil and gas production. State and local authorities regulate various aspects of oil and gas exploration and production activities, including the drilling of wells, the spacing of wells, the unitization or pooling of oil and gas properties, environmental matters, safety standards, market sharing and well site restoration.

The oil and gas industry is subject to laws, regulations and other legal requirements enacted or adopted by federal, state and local, as well as foreign, authorities relating to protection of the environment and health and safety matters, including those legal requirements that govern discharges of substances into the air and water, the management and disposal of hazardous substances and wastes, the cleanup of contaminated sites, groundwater quality and availability, and plant and wildlife protection.

RISKS RELATING TO OUR STRUCTURE

OUR GENERAL PARTNER AND ITS CONTROL PERSON COULD EXERCISE THEIR INFLUENCE OVER US TO YOUR DETRIMENT.

Mr. Icahn, through affiliates, currently owns 100% of API, our general partner, and approximately 86.5% of our outstanding depositary units and preferred units and, as a result, has and will have the ability to influence many aspects of our operations and affairs. API also is the general partner of AREH. In addition, an affiliate of Mr. Icahn owns a 50% interest and is the managing member of NEG Holding LLC. The other 50% interest is owned by National Energy Group, Inc., of which we own a majority of the common stock. Mr. Icahn and affiliates, other than AREP, own approximately 41.2% of the stock and 33.7% of the debt of GB Holdings, Inc. and its financing affiliate, respectively, which owns and operates the Sands Hotel and Casino. We own approximately 36.3% of the common stock and 24.5% of the debt of GB Holdings, Inc. and its financing affiliate, respectively. We may invest in entities in which Mr. Icahn also invests or purchase investments from him or his affiliates. Although API has never received fees in connection with our investments, our partnership agreement allows for the payment of these fees. Mr. Icahn may pursue other business opportunities in the real estate or other industries in which we compete and there is no requirement that any additional business opportunities be presented to us.

The interests of Mr. Icahn, including his interests in entities in which he and we have invested or may invest in the future, may differ from AREP's interests or its security holders interests and, as such, he may take actions

that may not be in AREP's interest.

CERTAIN OF OUR MANAGEMENT ARE COMMITTED TO THE MANAGEMENT OF OTHER BUSINESSES.

Certain of the individuals who conduct the affairs of API are and will in the future be committed to the management of other businesses owned by Mr. Icahn and his affiliates. Accordingly, these individuals will not be devoting all of their professional time to our management, and conflicts may arise between our interests and the other entities or business activities in which such individuals are involved. Conflicts of interest may arise in the future as such affiliates and we may compete for the same assets, purchasers and sellers of assets, lessees or financings.

WE MAY BE SUBJECT TO THE PENSION LIABILITIES OF OUR AFFILIATES.

Mr. Icahn, through certain affiliates, currently owns 100% of API and approximately 86% of our outstanding depositary units and preferred units. Applicable pension and tax laws make each member of a "controlled group" of entities, generally defined as entities in which there is at least an 80% common ownership interest, jointly and severally liable for certain pension plan obligations of any member of the controlled group. These pension obligations include ongoing contributions to fund the plan, as well as liability for any unfunded liabilities that may exist at the time the plan is terminated. In addition, the failure to pay these pension obligations when due may result in the creation of liens in favor of the pension plan or the Pension Benefit Guaranty Corporation, or the PBGC, against the assets of each member of the controlled group.

As a result of the more than 80% ownership interest in us by Mr. Icahn's affiliates, we and our subsidiaries, are subject to the pension liabilities of all entities in which Mr. Icahn has a direct or indirect ownership interest of at least 80%. One such entity, ACF Industries LLC, or ACF, is the sponsor of several pension plans which are underfunded by a total of approximately $28 million on an ongoing actuarial basis and $131 million if those plans were terminated, as most recently reported for the 2003 plan year by the plans' actuaries. These liabilities could increase or decrease, depending on a number of factors, including future changes in promised benefits, investment returns, and the assumptions used to calculate the liability. As members of the ACF controlled group, we would be liable for any failure of ACF to make ongoing pension contributions or to pay the unfunded liabilities upon a termination of the ACF pension plans. In addition, other entities now or in the future within the controlled group that includes us may have pension plan obligations that are, or may become, underfunded and we would be liable for any failure of such entities to make ongoing pension contributions or to pay the unfunded liabilities upon a termination of such plans.

The current underfunded status of the ACF pension plans requires ACF to notify the PBGC of certain "reportable events," such as if we cease to be a member of the ACF controlled group, or if we make certain extraordinary dividends or stock redemptions. The obligation to report could cause us to seek to delay or reconsider the occurrence of such reportable events.

Starfire Holding Corporation, which is 100% owned by Mr. Icahn, has undertaken to indemnify us and our subsidiaries from losses resulting from any imposition of pension funding or termination liabilities that may be imposed on us and our subsidiaries or our assets as a result of being a member of the Icahn controlled group. The Starfire indemnity provides, among other things, that so long as such contingent liabilities exist and could be imposed on us, Starfire will not make any distributions to its stockholders that would reduce its net worth to below $250 million. Nonetheless, Starfire may not be able to fund its indemnification obligations to us.

WE ARE SUBJECT TO THE RISK OF POSSIBLY BECOMING AN INVESTMENT COMPANY.

Because we are a holding company and a significant portion of our assets consists of investments in companies in which we own less than a 50% interest, we run the risk of inadvertently becoming an investment company that is required to register under the Investment Company Act of 1940. Registered investment companies are subject to extensive, restrictive and potentially adverse

regulation relating to, among other things, operating methods, management, capital structure, dividends and transactions with affiliates. Registered investment companies are not permitted to operate their business in the manner in which we operate our business, nor are registered investment companies permitted to have many of the relationships that we have with our affiliated companies.

To avoid becoming an investment company, we monitor the value of our investments and structure transactions with an eye toward the Investment Company Act. As a result, we may structure transactions in a less advantageous manner than if we did not have Investment Company Act concerns, or we may avoid otherwise economically desirable transactions due to those concerns. In addition, events beyond our control, including significant appreciation or depreciation in the market value of certain of our publicly traded holdings, could result in our inadvertently becoming an investment company.

If it were established that we were an investment company, there would be a risk, among other material adverse consequences, that we could become subject to monetary penalties or injunctive relief, or both, in an action brought by the SEC, that we would be unable to enforce contracts with third parties or that third parties could seek to obtain rescission of transactions with us undertaken during the period it was established that we were an unregistered investment company.

WE MAY BECOME TAXABLE AS A CORPORATION.

We operate as a partnership for federal income tax purposes. This allows us to pass through our income and deductions to our partners. We believe that we have been and are properly treated as a partnership for federal income tax purposes. However, the Internal Revenue Service, or IRS, could challenge our partnership status and we could fail to qualify as a partnership for past years as well as future years. Qualification as a partnership involves the application of highly technical and complex provisions of the Internal Revenue Code of 1986, as amended. For example, a publicly traded partnership is generally taxable as a corporation unless 90% or more of its gross income is "qualifying" income, which includes interest, dividends, real property rents, gains from the sale or other disposition of real property, gain from the sale or other disposition of capital assets held for the production of interest or dividends, and certain other items. We believe that in all prior years of our existence at least 90% of our gross income was qualifying income and we intend to structure our business in a manner such that at least 90% of our gross income will constitute qualifying income this year and in the future. However, there can be no assurance that such structuring will be effective in all events to avoid the receipt of more than 10% of non-qualifying income. If less than 90% of our gross income constitutes qualifying income, we may be subject to corporate tax on our net income at regular corporate tax rates. Further, if less than 90% of our gross income constituted qualifying income for past years, we may be subject to corporate level tax plus interest and possibly penalties. In addition, if we register under the Investment Company Act of 1940, it is likely that we would be treated as a corporation for U.S. federal income tax purposes and subject to corporate tax on our net income at regular corporate tax rates. The cost of paying federal and possibly state income tax, either for past years or going forward, would be a significant liability.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISKS

The United States Securities and Exchange Commission requires that registrants include information about primary market risk exposures relating to financial instruments. Through its operating and investment activities, we are exposed to market, credit and related risks, including those described elsewhere herein. As we may invest in debt or equity securities of companies undergoing restructuring or undervalued by the market, these securities are subject to inherent risks due to price fluctuations, and risks relating to the issuer and its industry, and the market for these securities may be less liquid and more volatile than that of higher

rated or more widely followed securities. After the sale of certain corporate bonds in April 2004, net investment in marketable equity and debt securities is less than $5 million.

Other related risks include liquidity risks, which arise in the course of our general funding activities and the management of our balance sheet. This

includes both risks relating to the raising of funding with appropriate maturity and interest rate characteristics and the risk of being unable to liquidate an asset in a timely manner at an acceptable price. Real estate investments by their nature are often difficult or time-consuming to liquidate. Also, buyers of minority interests may be difficult to secure, while transfers of large block positions may be subject to legal, contractual or market restrictions. Our other operating risks include lease terminations, whether scheduled terminations or due to tenant defaults or bankruptcies, development risks, and environmental and capital expenditure matters, as described elsewhere herein.

We invest in U.S. government and agency obligations which are subject to interest rate risk. As interest rates fluctuate, we will experience changes in the fair value of these investments with maturities greater than one year. If interest rates increased 100 basis points, the fair value of these investments at March 31, 2004, would decline by approximately $200,000.

We employ internal strategies intended to mitigate exposure to these and other risks. We, on a case by case basis with respect to new investments, perform internal analyses of risk identification, assessment and control. We review credit exposures, and seeks to mitigate counterparty credit exposure through various techniques, including obtaining and maintaining collateral, and assessing the creditworthiness of counterparties and issuers. Where appropriate, an analysis is made of political, economic and financial conditions, including those of foreign countries. Operating risk is managed through the use of experienced personnel. We seek to achieve adequate returns commensurate with the risk it assumes. We utilize qualitative as well as quantitative information in managing risk.

ITEM 4. CONTROLS AND PROCEDURES

a. As of March 31, 2004, the Company's management, including the Company's Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of the Company's and its subsidiaries' disclosure controls and procedures pursuant to the Exchange Act Rule 13a-15(e) and 15d-15(e). Based upon that evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and include controls and procedures designed to ensure that information required to be disclosed by the Company in such reports is accumulated and communicated to the Company's management, including the Company's principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

b. During the three months ended March 31, 2004, no change in the Company's internal control over financial reporting occurred that has materially affected, or is reasonably likely to materially affect, such internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

There have been no material developments to the legal proceedings previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2003.

ITEM 6. Exhibits and Reports on Form 8-K

(a) Form 8-K filed under Items 5 and 7 - January 5, 2004 with press release -- Exhibit 99.1 - American Real Estate Partners, L.P. Agrees To Acquire Arizona Charlie's Casinos In Las Vegas and Exhibit 99.2 - Membership Interest Purchase Agreement dated January 5, 2004.

(b) Form 8-K filed under Items 5 and 7 - January 16, 2004 with press release - Exhibit 99.1 - American Real Estate Partners, L.P.'s Subsidiary Prices Debt Offering.

(c) Form 8-K filed under Items 5 and 7 - February 25, 2004 with press release - Exhibit 99.1 - American Real Estate Partners, L.P. Declares Annual

Pay-In-Kind Distribution On Its Preferred Units Payable Solely in Additional Preferred Units.

(d) Form 8-K filed under Items 5 and 7 - March 15, 2004 with press release - Exhibit 99.1 - American Real Estate Partners, L.P. Reports Full Year and Fourth Quarter Results and That No Distributions Are Expected To Be Made in 2004.

EXHIBITS:

3.1	Certificate of Limited Partnership of AREP, dated February 17, 1987.
3.2	Amended and Restated Agreement of Limited Partnership of AREP, dated as of May 12, 1987.
3.4	Certificate of Limited Partnership of American Real Estate Holdings Limited Partnership (the "Subsidiary"), dated February 17, 1987, as amended pursuant to First Amendment to Certificate of Limited Partnership, dated March 10, 1987.
3.5	Amended and Restated Agreement of Limited Partnership of the Subsidiary, dated as of July 1, 1987.
4.1	Depositary Agreement among AREP, the General Partner and Registrar and Transfer Company, dated as of July 1, 1987.
4.6	Indenture, dated as of January 29, 2004, among ACEP, ACEP Finance, the guarantors from time to time party thereto and Wilmington Trust Company, as Trustee (the "Trustee").
4.7	Escrow Agreement, dated as of January 29, 2004, among ACEP, ACEP Finance, the Subsidiary, the Trustee and Fleet National Bank, as Escrow Agent.
10.21	Operating Agreement for NEG Holding LLC, dated May 1, 2001 (incorporated by reference to National Energy Group Inc.'s Exhibit 10.32 to Form 10-Q for the quarter ended September 30, 2001 (SEC File No. 000-19136), filed on November 14, 2001).
10.23	Management Agreement between National Energy Group, Inc. and NEG Operating LLC (incorporated by reference to National Energy Group Inc.'s Exhibit 10.35 to Form 10-Q for the quarter ended September 30, 2001 (SEC File No. 000-19136), filed on November 14, 2001)
10.24	Management Agreement between National Energy Group, Inc. and TransTexas Gas Corporation, dated August 28, 2003 (incorporated by reference to National Energy Group Inc.'s Exhibit 10.45 to Form 10-Q for the quarter ended September 30, 2003 (SEC File No. 000-19136), filed on November 14, 2003).
21	List of Subsidiaries
31.1	Certification of Chief Executive Officer-pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Chief Financial Officer-pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Principal Executive Officer-pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Principal Financial Officer-pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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.

AMERICAN REAL ESTATE PARTNERS, L.P.
By: American Property Investors, Inc.,
the general partner of American Real
Estate Partners, L.P.

/s/ JOHN P. SALDARELLI

John P. Saldarelli
Treasurer, Chief Financial Officer and
Principal Accounting Officer

Date: May 10, 2004

Exhibit 3.1

CERTIFICATE OF LIMITED PARTNERSHIP
OF
AMERICAN REAL ESTATE PARTNERS, L.P.

This Certificate of Limited Partnership of American Real Estate Partners, L.P. (the "Partnership"), dated February 13, 1987, is being duly executed and filed by American Property Investors, Inc., as sole General Partner, to form a limited partnership under the Delaware Revised Uniform Limited Partnership Act (6 Del. C.ss.17-101 et seq.).

1. The name of the limited partnership formed hereby is American Real Estate Partners, L.P.

2. The address of the registered office of the Partnership in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the name and address of the registered agent for service of process on the Partnership in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

3. The name and mailing address of the sole general partner of the Partnership is:

American Property Investors, Inc.
666 Third Avenue
New York, New York 10017

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Limited Partnership as of the date first above written.

GENERAL PARTNER

AMERICAN PROPERTY INVESTORS, INC.

By: /s/
_____
Vice President

EXHIBIT 3.2

AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

AMERICAN REAL ESTATE PARTNERS, L.P

TABLE OF CONTENTS

LIST OF EXHIBITS

Exhibit

AMENDED AND RESTATED
AGREEMENT OF LIMITED PARTNERSHIP
OF
AMERICAN REAL ESTATE PARTNERS, L.P.

This Amended and Restated Agreement of Limited Partnership (this "Agreement") is entered into as of May 12, 1987, by and among American Property Investors, Inc., a Delaware corporation, as general partner (the "General Partner"), and Julia DeSantis, as the organizational limited partner (the "Organizational Limited Partner"), and all other persons and entities who shall in the future become limited partners of this limited partnership in accordance with the provisions hereof (the "Limited Partners"). (The General Partner and the Limited Partners are sometimes hereinafter referred to individually as a "Partner" and collectively as the "Partners".)

Whereas, the General Partner and the Organizational Limited Partner entered into an Agreement of Limited Partnership, dated as of April 29, 1987 (the "Partnership Agreement"); and

Whereas, the General Partner and the Organizational Limited Partner now desire to amend the Partnership Agreement in certain respects;

Now, Therefore, in consideration of the foregoing and of the covenants and agreements hereinafter set forth, the Partnership Agreement is hereby amended and restated in its entirety to read as follows:

ARTICLE I

Certain Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified.

Accounting Firm: The firm of Touche Ross & Co. or such other nationally recognized firm of independent public accountants as shall be selected and approved by the General Partner from time to time.

Additional Limited Partner: A Person admitted to the Partnership as a Limited Partner pursuant to Section 11.04 and shown as a Limited Partner on the books and records of both the Partnership and the Depositary.

Adjusted Property: Any property the Carrying Value of which has been adjusted pursuant to Section 4.08(d) (i).

Affiliate: (a) Any Person directly or indirectly owning, controlling or holding power to vote ten percent (10%) or more of the outstanding voting securities of the Person in question; (b) any Person ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Person in question; (c) any Person directly or indirectly controlling, controlled by, or under common control with the Person in question; (d) if the Person in question is a corporation, any executive officer or director of the Person in question or of any corporation directly or indirectly controlling the Person in question; and (e) if the Person in question is a partnership, any general partner owning or controlling ten percent (10%) or more of either the capital or profit interests in such partnership. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Agreed Value: The fair market value of a Contributed Property as of the

date of contribution, as determined by the General Partner using such reasonable methods as may be adopted by the General Partner.

Agreement: This Amended and Restated Agreement of Limited Partnership, as it may be amended or supplemented from time to time.

API Certificate: A certificate evidencing limited partner interests in any one of the API Partnerships.

API Investor: A Person who was a general partner of one or more API Partnerships, an Affiliate of one or more such API general partners who performed certain services for one or more of the API Partnerships and a Person who was a limited partner in one or more of the API Partnerships.

API Partnerships: The thirteen American Property Investors limited partnerships, as described in the Registration Statement.

API Property: Any interest in real estate held by any of the API Partnerships.

Audit Committee: The committee comprised of directors of the General Partner not affiliated with the General Partner or its Affiliates, other than as a director of the General Partner, formed to review certain conflicts of interest and certain other

matters and to perform certain other functions pursuant to Section 5.13.

Book-Tax Disparities: The differences between a Partner's Capital Account balance, as maintained pursuant to Section 4.08, and such balance had the Capital Account been maintained strictly in accordance with tax accounting principles (such disparities reflecting the differences between the Carrying Value of either Contributed Properties or Adjusted Properties, as adjusted from time to time, and the adjusted basis thereof for federal income tax purposes).

Business Day: Monday through Friday of each week, except that a legal holiday recognized as such by the Government of the United States or the State of New York shall not be regarded as a Business Day.

Capital Account: The capital account established and maintained for the General Partner and each Record Holder pursuant to Section 4.08.

Capital Contribution: Any cash, cash equivalents or Contributed Property contributed to the Partnership by or on behalf of a Contributing Partner pursuant to Article IV.

Capital Transaction: Any (1) incurring of indebtedness secured by Partnership Assets, (2) refinancing of any indebtedness secured by Partnership Assets, (3) sale or exchange, liquidation or other disposition of any Partnership Assets, (4) net condemnation award or casualty loss recovery with respect to any Partnership Assets, (5) elimination of any funded reserve or (6) liquidation or dissolution of the Partnership.

Carrying Value: With respect to (a) Contributed Property, the Agreed Value of such Property reduced (but not below zero) by all deductions for depreciation, amortization, cost recovery and expense in lieu of depreciation debited to the Capital Accounts of a General Partner and the Record Holders pursuant to Section 4.08(a) with respect to such Property as of the time of determination, and (b) any other property, the adjusted basis of such property for federal income tax purposes as of the time of determination. The Carrying Value of any property shall be adjusted in accordance with Section 4.08(d), and to reflect changes, additions, or other adjustments to the Carrying Value for dispositions, acquisitions or improvements of Partnership Assets, as deemed appropriate by the General Partner.

Cash Flow: Cash Flow shall have the same meaning as "Net Cash Flow" in the Registration Statement.

Certificate: A non-negotiable certificate issued by the Partnership substantially in the form of Exhibit A to this Agreement, evidencing ownership of one or more Units.

Certificate of Limited Partnership: The certificate of limited partnership filed on behalf of the Partnership with the Secretary of State of the State of Delaware, as the same may be amended and/or restated from time to time.

Closing: The "closing time" as defined in the Merger Agreement.

Closing Date: The date on which the Closing occurs.

Code: The Internal Revenue Code of 1986, in effect from time to time, and applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

Commission: The Securities and Exchange Commission.

Consent Form: The form of consent distributed to API Investors who are limited partners in the API Partnerships soliciting their approval of the Exchange and all transactions contemplated thereby, a form of which is attached as Appendix D to the Proxy Statement/Prospectus included as part of the Registration Statement.

Contributed Property: A Contributing Partner's interest in each property or other consideration, in such form as may be permitted by the Delaware Act, but excluding cash and cash equivalents, contributed to the Partnership by such Contributing Partner (or deemed contributed to the Partnership upon termination thereof pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 4.08(d) (i), such property shall no longer constitute a Contributed Property for purposes of Section 5.02(b) but shall be deemed an Adjusted Property for such purposes.

Contributing Partner: Each Partner contributing (or deemed to have contributed upon termination of the Partnership pursuant to Section 708 of the Code) a Contributed Property.

Delaware Act: The Delaware Revised Uniform Limited Partnership Act (Del. Code Ann. tit. 6 Sections 17-101 et seq.), as amended to date and as it may be amended from time to time hereafter, and any successor to such Act.

Deposit Account: The account established by the Depositary pursuant to the Depositary Agreement.

Depositary Agreement: The agreement so designated to be entered into by and among the General Partner, in its capacity both as General Partner and as attorney-in-fact of the Record Holders, the Partnership and the Depositary, as it may be amended or supplemented from time to time.

Depositary: The Partnership's depositary, as selected and approved by the General Partner from time to time, in its sole and absolute discretion, or any successor to it as depositary under the Depositary Agreement.

Depositary Receipt: A depositary receipt, issued by the Depositary or agents appointed by the Depositary in accordance with the Depositary Agreement, evidencing ownership of one or more Depositary Units.

Depositary Unit: A Unit on deposit with the Depositary.

Exchange: The acquisition by the Operating Partnership of the API Properties and other assets, subject to the liabilities, of the API Partnerships in connection with which the API Investors will be issued Units and the Partnership will acquire a 99% limited partner interest in the Operating Partnership, as described in the Registration Statement.

Exchange Act: The Securities Exchange Act of 1934, as amended, and the regulations of the Commission promulgated thereunder.

FIRPTA: The Foreign Investment in Real Property Tax Act of 1980, as amended from time to time, and applicable regulations thereunder.

Fiscal year: The fiscal year of the Partnership for financial accounting purposes, and for federal, state, and local income tax purposes, which shall be the calendar year unless changed by the General Partner in accordance with Section 8.03.

General Partner: American Property Investors, Inc., a Delaware corporation, or any successor appointed pursuant to Sections 11.03, 12.01 or 12.02 hereof, as the case may be.

Limited Partner: A Record Holder or other limited partner admitted to the Partnership pursuant to Section 11.04. "Limited Partners" means all Record Holders and all other limited partners admitted to the Partnership pursuant to Section 11.04.

Liquidating Trustee: The General Partner, unless the dissolution of the Partnership is caused by the withdrawal, bankruptcy, removal or dissolution of the General Partner, in which event the Liquidating Trustee shall be the Person or Persons selected pursuant to Section 13.05.

Lost Certificate Affidavit: The section of the Consent Form (or a similar form providing indemnification) to be executed in favor of the Partnership by an API Investor who has lost or misplaced an API Certificate or whose API Certificate has been mutilated or destroyed.

Majority Interest: Record Holders who are Record Holders with respect to more than fifty percent (50%) of the total number of all outstanding Units.

Merger: The merger of the API Partnerships that approve the Exchange with and into the Operating Partnership, as described in the Registration Statement.

Merger Agreements: Agreements pursuant to which the API Partnerships that approve the Exchange are merged into the Operating Partnership and pursuant to which the API Properties and the other assets, subject to the liabilities, of the API Partnerships are contributed to the Operating Partnership pursuant to Section 4.03 of the OLP Partnership Agreement, a form of which is attached as Appendix B to the Proxy Statement/Prospectus included as part of the Registration Statement.

NASDAQ: The National Association of Securities Dealers Automated Quotations System.

National Securities Exchange: An exchange registered with the Commission under Section 6(a) of the Exchange Act.

New Property: Any direct or indirect interest in real estate acquired by the Partnership or by the Operating Partnership subsequent to the consummation of the Exchange.

Nominee: API Nominee Corp., a Delaware corporation, to whom Depositary Receipts evidencing Depositary Units are issued pursuant to the Exchange to be held for the account of Non-Consenting Investors, as described in the Registration Statement.

Non-Consenting Investor: As used herein, this term shall have the same meaning assigned to it in the Registration Statement. Non-Consenting Investors may only be admitted as Limited Partners as provided in Section 11.01(b) hereof.

OLP Partnership Agreement: The Amended and Restated Agreement of Limited Partnership of the Operating Partnership, as it may be amended or supplemented from time to time.

Operating Partnership: American Real Estate Holdings Limited Partnership, a Delaware limited partnership.

Organizational Limited Partner: Julia DeSantis.

Partner: The General Partner or a Limited Partner. "Partners" means the General Partner and all Limited Partners.

Partnership: The limited partnership governed by this Agreement and any successor limited partnership thereto continuing the business of the Partnership which is a reformation or reconstitution of the limited partnership governed by this Agreement.

Partnership Assets: All assets and property, whether tangible or intangible and whether real, personal or mixed, at any time owned by the Partnership.

Partnership Interest: As to any Partner, all of the interests of that Partner in the Partnership, including, without limitation, such Partner's (i) right to a distributive share of the profits and losses of the Partnership, (ii) right to a distributive share of Partnership Assets and (iii) right, if the General Partner, to participate in the management of the business and affairs of the Partnership.

Percentage Interest: The Percentage Interest of the General Partner shall be one percent (1%). The Percentage Interest of each Record Holder is equal to the product of (i) ninety-nine percent (99%) multiplied by (ii) the Unit Fraction for such Record Holder.

Person: Any individual, corporation, association, partnership, joint venture, trust, estate, unincorporated organization, association or other entity.

Property Management Agreement: The agreement to be entered into on the Closing Date by and between the Operating Partnership and Resources Property Management Corp., a Delaware corporation, pursuant to which Resources Property Management Corp. will perform certain property management and supervisory services in respect of the New Properties.

Recapture Income: Any gain recognized by the Partnership (but computed without regard to any adjustment required by Sections 734 or 743 of the Code) on the disposition of any Partnership Asset that does not constitute capital gain for federal income tax purposes because such gain represents the recapture of

deductions previously taken with respect to such property or assets.

Record Date: The date established by the General Partner, in its discretion, subject to Section 5.04(b) in the case of the Record Date for a distribution pursuant to Article V, for determining (i) the identity of Record Holders entitled to notice of or to vote at any meeting of Record Holders or entitled to exercise rights in respect of any other lawful action of Record Holders, or (ii) the identity of Partners entitled to receive any report pursuant to Section 8.04 or distribution pursuant to Article V.

Record Holder: As applied to a Depositary Unit, the Limited Partner or Subsequent Transferee in whose name the Depositary Receipt evidencing such Depositary Unit is issued on the books of the Depositary or a Transfer Agent as of the close of business on a particular day; and as applied to a Unit that is not on deposit in the Deposit Account, the Person shown as the owner of such Unit on the records of the Partnership as of the close of business on a particular day.

Registration Statement: The Registration Statement on Form S-4 to be filed by the Partnership with the Commission under the Securities Act to register the offering and sale of the Depositary Units pursuant to the Exchange, as the same may be amended from time to time.

Residual Gain or Residual Loss: Any net gain or net loss, as the case may be, of the Partnership recognized for federal income tax purposes resulting from a sale, exchange or other disposition of a Contributed Property or Adjusted Property, to the extent such net gain or net loss is not allocated pursuant to Section 5.02(b) to eliminate Book-Tax Disparities.

Section 754 Election: The election which may be made by the Partnership pursuant to Section 754 of the Code.

Securities Act: The Securities Act of 1933, as amended, and the regulations of the Commission promulgated thereunder.

Subsequent Transferee: A Person to whom one or more Depositary Units have been transferred, by assignment of a Depositary Receipt or otherwise, in a manner permitted under this Agreement, but who has not been admitted to the Partnership as a Substituted Limited Partner with respect to such Depositary Units. The rights of any such Person in the Partnership with respect to Depositary Units for which such Person has not been admitted to the Partnership as a Substituted Limited Partner shall be limited to the right to freely transfer the Depositary Units held by such Person. Unless and until such Person executes and delivers a

Transfer Application to the Depositary, such Person will not become a Record Holder or a Substituted Limited Partner and will not be entitled to any of the rights to which Limited Partners or Record Holders are entitled under the Delaware Act or this Agreement.

Substituted Limited Partner: A Person who is admitted to the Partnership as a Limited Partner in place of, and with all the rights of, a Limited Partner in accordance with Section 11.02.

Termination Date: December 31, 2085.

Transfer Agent: The Depositary or any bank, trust company or other Person (including the General Partner or any of its Affiliates) appointed by the General Partner from time to time, in its sole and absolute discretion, to act as transfer agent for Depositary Units.

Transfer Application: An application and agreement for transfer of Depositary Units in the form set forth on the back of the Depositary Receipt or in a form substantially to the same effect in a separate instrument (A) upon the execution and submission of which a Non-Consenting Investor (in addition to the submission of his API Certificates or, in lieu thereof, his execution of a Lost Certificate Affidavit) or Subsequent Transferee requests the Depositary to recognize him as a Record Holder and (B) by which such a Non-Consenting Investor or Subsequent Transferee (i) requests admission to the Partnership as a Substituted Limited Partner, (ii) agrees to be bound by the terms and conditions of this Agreement and the Depositary Agreement, (iii) represents that he has the capacity and authority to enter into this Agreement and the Depositary Agreement, (iv) grants a power of attorney to the General Partner and (v) makes the consents and waivers contained herein.

Unit: A Partnership Interest in the Partnership, other than the General Partner's Partnership Interest as a General Partner, acquired or issued pursuant to this Agreement, provided that each Unit at any time outstanding shall represent the same fractional part of the Partnership Interests of all Record Holders as each other Unit (unless any class or series of Units issued pursuant to Section 4.05 shall have designations, preferences or special rights such that a Unit of such class or series shall represent a greater or lesser part of the Partnership Interests of all Record Holders than a Unit of any other class or series of Units, in which event the Partnership Interest represented by a Unit of such class or series shall be determined in accordance with such designations, preferences and special rights as are fixed by the General Partner pursuant to Section 4.05 with respect to such class or series of Units).

Unit Fraction: With respect to any Record Holder, a fraction, the numerator of which is the number of Depositary Units and held by such Record Holder as of the date of such determination and the denominator of which is the total number of Depositary Units and Units outstanding as of the date of such determination.

Unit Price: Of a Depositary Unit, as of any date of determination: (i)

if the Depositary Units are listed or admitted to trading on one or more National Securities Exchanges, the last reported sale price per Depositary Unit regular way or, in case no such reported sale takes place on any such day, the last reported bid price per Depositary Unit regular way, in either case on the principal National Securities Exchange on which the Depositary Units are listed or admitted to trading, on the date of determination; (ii) if the Depositary Units are not listed or admitted to trading on a National Securities Exchange but are quoted by NASDAQ, the closing bid price per Depositary Unit, on the date of determination, as furnished by the National Quotation Bureau Incorporated or such other nationally recognized quotation service as may be selected by the General Partner for such purpose, if such Bureau is not at the time furnishing quotations; or (iii) if the Depositary Units are not listed or admitted to trading on a National Securities Exchange or quoted by NASDAQ, an amount equal to the fair market value of a Unit as of such date of determination, as determined by the General Partner using any reasonable method of valuation.

Unrealized Gain: The excess, if any, of the fair market value of a Partnership Asset as of the date of determination over the Carrying Value of such Partnership Asset as of the date of determination (prior to any adjustment to be made pursuant to Section 4.08(d) as of such date).

Unrealized Loss: The excess, if any, of the Carrying Value of a Partnership Asset as of the date of determination over the fair market value of such Partnership Asset as of the date of determination (prior to any adjustment to be made pursuant to Section 4.08(d) as of such date).

ARTICLE II

Formation; Name; Place of Business; Term

2.01. Formation of Partnership: Certificate of Limited Partnership. The General Partner and the Organizational Limited Partner heretofore have formed and hereby agree to continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the ad-

ministration and termination of the Partnership shall be governed by the Delaware Act. In accordance with the Delaware Act, the General Partner has filed with the Secretary of State of the State of Delaware the Certificate of Limited Partnership. If the laws of any jurisdiction in which the Partnership transacts business so require, the General Partner also shall file with the appropriate office in that jurisdiction a copy of the Certificate of Limited Partnership and any other documents necessary to establish and maintain the Record Holders' limited liability in such jurisdiction. The Partners further agree and obligate themselves to execute, acknowledge, and cause to be filed for record, in the place or places and manner prescribed by law, any amendments to The Certificate of Limited Partnership as may be required, either by the Delaware Act, by the laws of a jurisdiction in which the Partnership transacts business, or by this Agreement, to reflect changes in the information contained therein or otherwise to comply with the requirements of law for the continuation, preservation, and operation of the Partnership as a limited partnership pursuant to the Delaware Act. Subject to Section 8.02(b), the General Partner shall not be required to deliver or mail a copy of the Certificate of Limited Partnership or any amendment thereto or restatement thereof to any Record Holder.

2.02. Name of Partnership. The name under which the Partnership shall conduct its business is American Real Estate Partners, L.P. The business of the Partnership may be conducted under any other name deemed necessary or desirable by the General Partner, in its sole and absolute discretion, except that such other name may not include the surname of any Record Holder unless such surname is also the name or surname of the General Partner. The General Partner promptly shall execute, file, and record any assumed or fictitious name certificates or other statements or certificates as are required by the laws of Delaware or any other state in which the Partnership transacts business. The General Partner, in its sole and absolute discretion, may change the name of the Partnership at any time and from time to time.

2.03. Place of Business. The principal place of business of the Partnership shall be located at such place or places within the United States as the General Partner shall, in its sole and absolute discretion, determine. The General Partner may, in its sole and absolute discretion, establish and maintain

such other offices and additional places of business of the Partnership, either within or without the State of Delaware, as it deems appropriate.

2.04. Registered Office and Registered Agent. The address of the registered office of the Partnership in the State of Delaware shall be Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and the registered agent for service

of process on the Partnership in the State of Delaware at such address shall be The Corporation Trust Company.

2.05. Term. The Partnership commenced on the date upon which the Certificate of Limited Partnership was duly filed with the Secretary of State of the State of Delaware pursuant to Section 2.01 and shall continue until the Termination Date unless dissolved and liquidated before the Termination Date in accordance with the provisions of Article XIII.

ARTICLE III

Purposes; Nature of Business

3.01. Purposes and Business. The purposes of the Partnership shall be (a) to directly or indirectly invest in, acquire, own, hold, manage, operate, sell, exchange and otherwise dispose of interests in real estate (including, without limitation, a limited partner interest in the Operating Partnership) and (b) to enter into any lawful transaction and engage in any lawful activities in furtherance of the foregoing purposes (including, without limitation, any transaction or activity outside the normal scope of the Partnership's business).

ARTICLE IV

Capital

4.01. Capital Contributions of General Partner. From time to time, the General Partner shall make Capital Contributions to the Partnership, which contributions have an Agreed Value reduced by any indebtedness either assumed by the Partnership upon such contribution or to which such contribution is subject when contributed, in an amount necessary to enable it at all times to maintain its aggregate Capital Contributions in an amount proportionally equal to its Percentage Interest in the Partnership.

4.02. Capital Contribution of Organizational Limited Partner. Upon the formation of the Partnership, the Organizational Limited Partner made a Capital Contribution in the amount of Ninety-Nine Dollars ($99) in cash. Concurrently with the Closing, the Capital Contribution of the Organizational Limited Partner shall be returned, without interest, the Organizational Limited Partner shall withdraw from the Partnership, and the Organizational Limited Partner, as such, shall have no further rights, claims or interests as a Partner in and to the Partnership.

4.03. Initial Capital Contributions. On the Closing Date, API Investors in API Partnerships that participate in the Exchange

shall contribute to the Partnership the limited partner interests the Operating Partnership received by them pursuant to the Merger. Each such API Investor who returns both an executed Consent Form and his API Certificates (or, in lieu thereof, executes the Lost Certificate Affidavit) in connection with the Exchange shall be deemed a Record Holder and shall be issued one (1) Unit for each limited partner interest in the Operating Partnership contributed to the Partnership pursuant to this Section 4.03, as described in the Registration Statement. Units issuable pursuant to the Exchange in respect of limited partner interests in the Operating Partnership owned by Non-Consenting Investors shall be issued to the Nominee to be held for the account of such Non-Consenting Investors subject to the terms of Section 11.01(b) hereof.

4.04. Non-Assessability of Units. Each Unit shall be fully paid and nonassessable, and no Limited Partner, Record Holder, Non-Consenting Investor or

Subsequent Transferee shall be required to make any additional Capital Contribution, except as provided in the Delaware Act.

4.05. Additional Issuance of Units: Additional Issuance of. Securities.

(a) In order to raise additional capital or to acquire assets, to redeem or retire Partnership debt, to comply with any provision of the OLP Partnership Agreement or for any other Partnership purpose, the General Partner is authorized to cause the Partnership to issue Units or classes thereof in addition to those issued pursuant to Section 4.03 hereof from time to time to Partners or to other Persons and to admit them to the Partnership as Additional Limited Partners pursuant to Section 11.04 hereof, all without the consent or approval of the Record Holders or any percentage thereof. There shall be no limit on the number of Units that may be so issued. The Partnership may assume liabilities in connection with any such issuance. Subject to the provisions of Section 4.05(c) hereof, the General Partner shall have sole and absolute discretion in determining the consideration and terms and conditions with respect to any future issuance of Units. The General Partner shall do all things necessary to comply with the Delaware Act and is authorized and directed to do all things it deems to be necessary or advisable in connection with any such future issuance, including, without limitation, amending this Agreement and complying with any statute, rule, regulation or guideline of any federal, state or other governmental agency or any National Securities Exchange on which the Depositary Units are listed for trading.

(b) Notwithstanding anything in this Agreement to the contrary, Units to be issued by the Partnership shall be issuable

from time to time in one or more classes with such designations, preferences and relative, participating, optional or other special rights, powers and duties, including rights, powers and duties senior to existing classes of Units, all as shall be fixed by the General Partner in the exercise of its sole and absolute discretion, including, without limitation, (i) the allocation, for federal income and other tax purposes, to such class of Units of items of Partnership income, gain, loss, deduction and credit; (ii) the right of such class of Units to share in Partnership distributions; (iii) the rights of such class of Units upon dissolution and liquidation of the Partnership; (iv) whether such class of Units is redeemable by the Partnership and, if so, the price at, and the terms and conditions on, which such class of Units may be redeemed by the Partnership; (v) whether such class of Units is issued with the privilege of conversion and, if so, the rate at and the terms and conditions upon which such class of Units may be converted into any other class of Units; (vi) the terms and conditions of the issuance of such class of Units, the deposit of such class of Units with the Depositary, the issuance of Depositary Receipts in respect thereof, and all other matters relating to the assignment thereof; and (vii) the rights of such class of Units to vote on matters relating to the Partnership and this Agreement. Upon the issuance of any class of Units, the General Partner (pursuant to the General Partner's powers of attorney from the Record Holders), without the approval at the time of any Record Holder (each Person accepting Units being deemed to approve of such amendment) may amend any provision of this Agreement and execute, swear to, acknowledge, deliver, file and record, if required, an amended Certificate of Limited Partnership and such other documents as may be required in connection therewith, as shall be necessary or desirable to reflect the authorization and issuance of such class of Units and the relative rights and preferences of such class of Units as to the matters set forth in the preceding sentence. The General Partner is also authorized to cause the issuance of any other type of security of the Partnership from time to time to Partners or other Persons on terms and conditions established in the sole and absolute discretion of the General Partner. Such securities may include, without limitation, unsecured and secured debt obligations of the Partnership, debt obligations of the Partnership convertible into any class of Units that may be issued by the Partnership, options, rights or warrants to purchase any such class of Units or any combination of any of the foregoing.

(c) The General Partner or any Affiliate of the General Partner may, but shall not be obligated to, make contributions to the Partnership in exchange for Units, provided that the number of Units issued in exchange for any such contribution shall not exceed the Agreed Value of the contribution reduced by any indebtedness either assumed by the Partnership upon such contributions

or to which such property is subject when contributed, divided by the average closing Unit Price for the twenty (20) trading days immediately preceding such contribution.

4.06. Splits and Combinations.

(a) The General Partner, in its sole and absolute discretion, may (i) make a distribution in Units to all Record Holders or (ii) effect a subdivision or combination of Units, but in each case only on a pro rata basis so that, after such distribution, subdivision or combination, each Record Holder shall, subject to Section 4.06(d), have the same Percentage Interest in the Partnership as before such distribution, subdivision or combination.

(b) Whenever such a distribution, subdivision, or combination is declared, the General Partner shall select a Record Date as of which the distribution, subdivision or combination shall be effective and shall send notice of the distribution, subdivision or combination at least twenty (20) days prior to such Record Date to each Record Holder as of the date ten (10) days prior to the date of such notice.

(c) Promptly following any such distribution, subdivision or combination, the General Partner may cause Certificates or Depositary Receipts, as the case may be, to be issued to the Record Holders as of the applicable Record Date representing the new number of Units or Depositary Units held by such Record Holder, or the General Partner may adopt such other procedures as it may deem appropriate to reflect such distribution, subdivision or combination; provided, however, that in the event any such distribution, subdivision or combination results in a smaller total number of Units outstanding, the General Partner may require, as a condition to the delivery to a Record Holder of such new Certificate or Depositary Receipt, the surrender of any Certificate or Depositary Receipt representing the Units held by such Record Holder immediately prior to such Record Date.

(d) The Partnership shall not be required to issue fractional Units upon any distribution, subdivision or combination of Units. In the event any distribution, subdivision or combination of Units would result in the issuance of fractional Units but for the provisions of Section 4.05 and this Section 4.06(d), each fractional Unit shall be rounded to the nearest whole Unit.

4.07. No Preemptive Rights. Neither the General Partner nor any Record Holder shall have any preemptive right with respect to (a) additional Capital Contributions, (b) issuance or sale of Units, whether unissued, held in the treasury or hereafter created, (c) issuance of any obligations, evidences of indebtedness or other securities of the Partnership convertible into

or exchangeable for, or carrying or accompanied by any rights to receive, purchase or subscribe to, any such unissued Units or Units held in treasury, (d) issuance of any right of, subscription to or right to receive, or any warrant or option for the purchase of, any of the foregoing securities or (e) issuance or sale of any other securities that may be issued or sold by the Partnership.

4.08. Capital Accounts.

(a) A separate Capital Account shall be established and maintained for the General Partner and each Record Holder. The Capital Account of the General Partner and each Record Holder shall be credited with the cash and the Agreed Value of any property, contractual rights or other non-cash consideration (net of liabilities assumed by the Partnership and liabilities to which the contributed property is subject) contributed or deemed contributed to the Partnership by such General Partner or Record Holder, plus all income, gain, or profits of the Partnership computed in accordance with Section 4.08(b) and allocated to such General Partner or Record Holder pursuant to Section 5.01, and shall be debited with the sum of (i) all losses or deductions of the Partnership computed in accordance with Section 4.08(b) and allocated to such General Partner or Record Holder, pursuant to Section 5.01, (ii) such General Partner's or Record Holder's distributive share of expenditures of the Partnership

described in Section 705(a)(2)(B) of the Code (including expenditures made in respect of the offering and sale of Units that are not depreciable, deductible or amortizable for federal income tax purposes), and (iii) all cash and the fair market value of any property (net of liabilities assumed by such General Partner or Record Holder and liabilities to which such property is subject) distributed or deemed distributed by the Partnership to such General Partner or Record Holder. Notwithstanding anything to the contrary contained herein, the Capital Account of a General Partner or Record Holder shall be determined in all events solely in accordance with the rules set forth in Treasury Regulation Section 1.704-1(b)(2)(iv), as the same may be amended or revised hereafter. Any references in any Section or subsection of this Agreement to the Capital Account of a General Partner or Record Holder shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time.

(b) For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in the Capital Accounts, the determination, recognition and classification of each such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose), provided that:

(i) In accordance with the requirements of Section 704(c) of the Code, any deductions for depreciation, cost recovery, amortization or expense in lieu of depreciation, attributable to a Contributed Property shall be determined as if the adjusted basis of the property on the date it was acquired by the Partnership was equal to the Agreed Value of such Partnership Asset as of such date. Upon an adjustment pursuant to Section 4.08(d)(i) to the Carrying Value of any Partnership Asset subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such Asset shall be determined as if the adjusted basis of such Asset was equal to the Carrying Value of such Asset immediately following such adjustment.

(ii) Any income, gain or loss attributable to the taxable disposition of any Partnership Asset shall be determined by the Partnership as if the adjusted basis of such Partnership Asset as of such date of disposition was equal to the amount of the Carrying Value of such Partnership Asset as of such date;

(iii) The computation of all items of income, gain, loss, and deduction shall be made without regard to the Section 754 Election; and

(iv) For purposes of the application of the provisions of this Section 4.08, the Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner) of all property owned by the Operating Partnership.

(c) In general, any Substituted Limited Partner shall succeed to the Capital Account relating to the Partnership Interest transferred. However, if the transfer causes a termination of the Partnership under Section 708(b)(1)(B) of the Code, the Partnership Assets shall be deemed to have been distributed in liquidation of the Partnership to the General Partner and the Record Holders (including the Substituted Limited Partners) and deemed reconstituted by such General Partner, the Record Holders and Substituted Limited Partners in reconstitution of the Partnership. The Capital Accounts of the reconstituted Partnership shall be maintained in accordance with the principles of this Section 4.08.

(d) (i) Upon an issuance of additional Units for cash or Contributed Property pursuant to Section 4.05, the Capital Accounts of the General Partner and the Record Holders and the Carrying Values of all Partnership Assets shall, immediately prior to such issuance, be adjusted (consistent with the provisions hereof) upwards or downwards to reflect any Unrealized Gain or Unrealized

Loss attributable to each Partnership Asset (as if such Unrealized or Urealized Loss had been recognized upon an actual sale of each such Partnership Asset, immediately prior to such issuance, and had been allocated to the General Partner and the Record Holders, at such time, pursuant to Section 5.01). In determining such Unrealized Gain or Unrealized Loss, the fair market value of Partnership Assets shall be determined (1) first, by multiplying the number of Units outstanding, as of the date of determination, by the Unit Price of a Unit determined as of such date, (2) second, by dividing the value determined under clause (1) by 99%, and (3) third, by adding to the value determined under clause (2) the amount of any Partnership indebtedness as of the date of determination.

(ii) Immediately prior to an actual distribution of any Partnership Asset, the Capital Accounts of the General Partner and the Record Holders and the Carrying Values of all Partnership Assets shall be adjusted (consistent with the provisions hereof and of Section 704 of the Code) upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to each Partnership Asset (as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each Partnership Asset, immediately prior to such distribution, and had been allocated to the General Partner and the Record Holders, at such time, pursuant to Section 5.01). In determining such Unrealized Gain or Unrealized Loss, the fair market value of Partnership Assets shall be determined by the General Partner using such reasonable methods of valuation as it may adopt.

4.09. Negative Capital Accounts.

(a) Except to the extent provided in Section 4.09(b), neither the General Partner nor any Record Holder shall be required to pay to the Partnership or to any other General Partner or Record Holder any deficit or negative balance which may exist from time to time in such General Partner's or Record Holder's Capital Account.

(b) Notwithstanding the foregoing, on the dissolution and termination of the Partnership, if the General Partner shall have a deficit or negative balance in its Capital Account following the payment of the Capital Contribution provided for in Section 4.01 and the allocation of all income and loss from Capital Transactions pursuant to Section 5.02, then the General Partner shall be required to pay the lesser of (i) the amount of such deficit or negative balance or (ii) the excess of one and one-hundredth percent (1.01%) of the Capital Contributions of the Record Holders over the Capital Contribution of the General Partner to the Partnership. After the payment of any remaining debts and liabilities of the Partnership as provided for in

sections 5.02 and 13.05, any such amount paid to the Partnership be distributed to the Partners and Record Holders in accordance with their respective positive Capital Account balances, as provided for in Section 5.03.

4.10. No Interest on Amounts in Capital Accounts. Neither the General Partner nor any Record Holder shall be entitled to receive any interest on its outstanding Capital Account balance.

4.11. Loans by the General Partner and Record Holders. Loans by the General Partner or Record Holders to the Partnership shall not be considered Capital Contributions. If the General Partner or a Record Holder shall advance funds to the Partnership in excess of the amounts required hereunder to be contributed by it to the capital of the Partnership, the making of such advances shall not result in any increase in the amount of the Capital Account of such General Partner or Record Holder or entitle such General Partner or Record Holder to any increase in its Percentage Interest (as defined in Article V). The amounts of any such advances shall be a debt of the Partnership to such General Partner or Record Holder and shall be payable or collectible only out of the Partnership Assets in accordance with the terms and conditions upon which such advances are made.

4.12. Liability of Record Holders. Except as provided in the Delaware Act, none of the Record Holders shall be personally liable for any debts, liabilities, contracts or obligations of the Partnership.

ARTICLE V

Allocations of Income and Loss; Distributions

5.01. Capital Account Allocations. For purposes of maintaining the Capital Accounts and determining the rights of the General Partner and the Record Holders among themselves, each item of income, gain, loss and deduction shall be allocated among the General Partner and the Record Holders in the following manner:

(a) Except as otherwise provided in this Section 5.01, all items of income, gain, loss and deduction of the Partnership, computed in accordance with Section 4.08(b), and any income of the Partnership described in Section 705(a)(1)(B) of the Code shall be allocated to the General Partner and the Record Holders in accordance with their respective Percentage Interests.

(b) In the event the General Partner or a Record Holder receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5)

or (6), such General Partner or Record Holder shall be specially allocated items of income and gain in an amount and manner sufficient to eliminate, as quickly as possible, any deficit balance in such General Partner's or Record Holder's Capital Account created by such adjustment, allocation or distribution. This Section 5.01(b) is intended to constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(3).

(c) If the Capital Account of the General Partner or a Record Holder has a deficit balance resulting in whole or in part from allocations of loss or deduction attributable to nonrecourse debt that is secured by Partnership Assets, which deficit balance exceeds such General Partner's or Record Holder's share of Minimum Gain (as defined below), then such General Partner or Record Holder shall first be allocated items of income and gain in the amount and in the proportions needed to eliminate such excess as quickly as possible. For purposes of this Section 5.01(c), "minimum gain" means the excess of the outstanding principal balance of nonrecourse debt that is secured by Partnership Assets over the Partnership's adjusted tax basis of such Assets. This Section 5.01(c) is intended to comply with the requirements of Treasury Regulation Section 1.704-1(b)(4)(iv).

(d) To preserve the uniformity of Units, the General Partner shall have sole discretion in conjunction with Section 5.02(g) to make special allocations of income or deductions. The General Partner may make such allocations only if they would not have a material adverse effect on the Record Holders and if they are consistent with, and supportable under, the principles of Section 704 of the Code.

5.02. Tax Allocations. For federal income tax purposes, each item of income, gain, loss and deduction of the Partnership shall be allocated among the General Partner and the Record Holders in the following manner:

(a) Except as otherwise provided in this Section 5.02, all such items of income, gain, loss and deduction of the Partnership shall be allocated to the General Partner and the Record Holders in accordance with their Percentage Interests.

(b) In the case of a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation and cost recovery deductions attributable thereto shall be allocated for federal income tax purposes among the General Partner and the Record Holders as follows:

(1) In the case of a Contributed Property, such items shall be allocated among the General Partner and the Record Holders in a manner that takes into account the variation between the Agreed Value of such property and its

adjusted basis at the time of contribution in attempting to eliminate Book-Tax Disparities. Except as otherwise provided in Section 5.02(c) and 5.02(d) below, any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the General Partner and the Record Holders in accordance with their Percentage Interests;

(2) In the case of an Adjusted Property, such items shall (a) first, be allocated among the General Partner and the Record Holders in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized Loss attributable to such property and the allocations thereof pursuant to Section 4.08(d)(i) in attempting to eliminate Book-Tax Disparities, and (b) second, in the event such property was originally a Contributed Property, be allocated among the General Partner and the Record Holders in a manner consistent with the first sentence of paragraph (b) (1) above. Except as otherwise provided in Sections 5.02(c) and 5.02(d) below, any items of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the General Partner and the Record Holders in accordance with the provisions of Section 5.02(a).

(c) If the General Partner or a Record Holder receives any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6), items of Partnership income and gain shall be specially allocated to such General Partner or Record Holder in an amount and manner consistent with the allocation of income and gain pursuant to Section 5.01(b).

(d) If the General Partner's or a Record Holder's Capital Account has a deficit balance as described in Section 5.01(c), items of income and gain of the Partnership shall be allocated to such General Partner or Record. Holder in an amount and manner consistent with the allocation of income and gain pursuant to Section 5.01(c).

(e) To the extent of any Recapture Income resulting from the sale or other taxable disposition of Partnership Assets, the amount of any gain from such disposition allocated to (or recognized by) the General Partner or a Record Holder (or its successor in interest) for federal income tax purposes

pursuant to the above provisions shall be deemed to be Recapture Income to the extent such General Partner or Record Holder has been allocated or has claimed any deduction directly or indirectly giving rise to the treatment of such gain as Recapture Income.

(f) All items of income, gain, loss, deduction and basis allocation recognized by the Partnership for federal income tax purposes and allocated to the General Partner and the Record Holders in accordance with the provisions hereof shall be determined without regard to the Section 754 Election which may be made by the Partnership; provided, however, such allocations, once made, shall be adjusted as necessary or appropriate to take into account those adjustments permitted by Sections 734 and 743 of the Code and, where appropriate, to provide only the General Partner and the Record Holders recognizing gain on Partnership distributions covered by Section 734 of the Code with the federal income tax benefits attributable to the increased basis in Partnership Assets resulting from the Section 754 Election.

(g) It is intended that the allocations prescribed in Sections 5.02(b)(1) and (b)(2) constitute allocations for federal income tax purposes that are consistent with Section 704 of the Code and comply with any limitations or restrictions therein, to the extent reasonably possible without causing Units to lack uniform characteristics for federal income tax purposes. If uniformity of the Units cannot be preserved by application of Sections 5.02(b)(1) and (b)(2), then the General Partner shall have sole discretion to (i) adopt such conventions as it deems appropriate in determining the amount of depreciation and cost recovery deductions; (ii) make special allocations of income or deduction and (iii) amend the provisions of this Agreement as appropriate (a) to reflect the proposal or promulgation of Treasury Regulations under Section 704(c) of the Code, or (b) otherwise to preserve the uniformity of Units issued

or sold from time to time; provided, however, that the General Partner may adopt such conventions, make such allocations or amend this Agreement as provided in this Section 5.02(g) only if the same would not have a material adverse effect on the Limited Partners and if such allocations are consistent with and supportable under the principles of Section 704 of the Code.

(h) For purposes of the interpretation and application of this Article V, the Partnership shall be treated as owning its proportionate share of all properties owned by the Operating Partnership.

5.03. Distributions of Cash Flow and Capital Proceeds.

(a) Cash Flow of the Partnership for each Fiscal Year or portion thereof shall be distributed quarter-annually, or at any other time to the extent deemed appropriate by the General Partner in its sole and absolute discretion, to Record Holders on the Record Date or Record Dates established for such distribution, in the following order of priority:

(i) first, to the payment of any debts and liabilities of the Partnership which shall then be due and payable;

(ii) next, to the establishment of such reserves as the General Partner deems reasonably necessary to provide for any future, contingent or unforeseen liabilities or obligations of the Partnership;

(iii) the balance, if any, to the General Partner and the Record Holders, pro rata, in accordance with their respective Percentage Interests.

(b) If distributed, proceeds of Capital Transactions, other than on liquidation or dissolution of the Partnership, shall be distributed as follows:

(i) first, to discharge (to the extent required by any lender or creditor other than any Partner in its capacity as such) debts and obligations of the Partnership which are then due and payable;

(ii) next, to the establishment of such reserves as the General Partner deems reasonably necessary to provide for any future contingent or unforeseen liabilities or obligations of the Partnership;

(iii) the balance, if any, to the. General Partner and the Record Holders in accordance with their respective Percentage Interests.

(c) The General Partner shall convert all non-cash assets of the Partnership to cash before any distribution upon liquidation or dissolution of the Partnership. Distribution of proceeds on liquidation or dissolution of the Partnership, and any other remaining assets of the Partnership to be distributed to the General Partner and the Record Holders in connection with the dissolution and liquidation of the Partnership pursuant to Article XIII, shall be made as follows:

(i) first, to the payment of any debts and liabilities of the Partnership which shall then be due and payable;

(ii) next, to the establishment of such reserves as the General Partner deems reasonably necessary to provide for any future, contingent or unforeseen liabilities or obligations of the Partnership; and

(iii) next, pro rata in accordance with and to the extent of the positive balances in the General Partner's and Record Holders' respective Capital Accounts.

(d) At the General Partner's election, exercisable in its sole

discretion, each quarterly distribution made pursuant to Section 5.03(a) hereof may be allocated monthly among the General Partner and the Record Holders of record as of the last day of each month during the quarter in respect of which such quarterly distribution is made; provided, however, that no such allocation shall be made unless the General Partner concludes, in its sole discretion, that such monthly allocation convention does not result in a material adverse effect to the Record Holders, taken as a whole. For all purposes of this Agreement, any Partner's allocable share of the aggregate amount withheld from any distribution hereunder in respect of state income taxes paid or payable by the Partnership on behalf of such Partner shall be treated as having been distributed to such Partner.

5.04. Distributions and Allocations of Income and Loss With Respect to Interests Transferred.

(a) Distributions of Partnership Assets (including cash) in respect of a Unit or Depositary Unit shall be made only to the Person who, according to the books and records of the Partnership and the Depositary, is the Record Holder of such Unit or Depositary Unit in respect of which such distribution is being made on the Record Date for such distribution.

(b) Each item of Partnership income, gain, loss and deduction shall, for federal income tax purposes, be determined on an annual basis (or other basis as required or permitted by Section 706 of the Code), apportioned equally among the constituent calendar months, and allocated to the General Partner and the Record Holders in accordance with their Percentage Interests as of the last day of the month; provided, however, that gain or loss from a Capital Transaction shall (subject to the provisions of Section 5.02(b) hereof) be allocated to the General Partner and the Record Holders as of the last day of the calendar month in which the Capital Transaction giving rise to such gain or loss occurred; provided, further, however, that, if gain from a Capital Transaction is recognized by the Partnership over more than one calendar year, gain recognized by the Partnership in years subsequent to the year in which the Capital Transaction occurred shall be allocated in the same manner as income of the Partnership is allocated

in such year pursuant to the first sentence of this subparagraph (b). The General Partner may revise, alter or otherwise modify such methods of determination and allocation as it deems necessary to the extent permitted by Section 706 of the Code and regulations rulings promulgated thereunder.

(c) The General Partner shall incur no liability for making allocations and distributions in accordance with the provisions of this Section 5.04, whether or not the General Partner has knowledge or notice of any transfer or purported transfer of ownership of any Unit.

ARTICLE VI

Management

6.01. Management and Control of Partnership. Except as otherwise expressly provided or limited by the provisions of this Agreement (including, without limitation, the provisions of Article VII), the General Partner shall have full, exclusive and complete discretion to manage and control the business and affairs of the Partnership, to make all decisions affecting the business and affairs of the Partnership, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Partnership as set forth herein. The General Partner shall use reasonable efforts to carry out the purposes of the Partnership and shall devote to the management of the business and affairs of the Partnership such time as the General Partner, in its sole and absolute discretion, shall deem to be reasonably required for the operation thereof. No Limited Partner, Record Holder, Non-Consenting Investor or Subsequent Transferee shall have any authority, right or power to bind the Partnership, or to manage or control, or to participate in the management or control of, the business and affairs of the Partnership in any manner whatsoever.

6.02. Powers of General Partner. Subject to Section 6.08, the General Partner (acting on behalf of and at the expense of the Partnership) shall have the right, power and authority, in the management and control of the business and affairs of the Partnership, to do or cause to be done any and all

acts deemed by the General Partner to be necessary or appropriate to carry out the purposes and business of the Partnership. The power and authority of the General Partner pursuant to this Agreement shall be liberally construed to encompass all acts and activities in which a limited partnership may engage under the Delaware Act, subject to the provisions of Section 3.01 hereof. The expression of any power, authority or right of the General Partner in this Agreement shall not limit or exclude any other power, authority or right which is not specifically or expressly set forth in this Agreement or the Delaware Act.

6.03. Purchase or Sale of Units. The General Partner may, on behalf of and for the account of the Partnership, at such times and on such terms as the General Partner, in its sole and absolute discretion, deems to be in the best interests of the Partnership, the Limited Partners, Record Holders, Non-Consenting Investors and Subsequent Transferees, purchase or otherwise acquire Units or Depositary Units and, following any such purchase or acquisition, may sell or otherwise dispose of such Units and Depositary Units. So long as such Units or Depositary Units shall be held by or on behalf of the Partnership, such Units or Depositary Units shall not be considered outstanding for any purpose. In addition to the foregoing, the General Partner and its Affiliates also may purchase or otherwise acquire Units or Depositary Units for their own account and may, subject to the provisions of Sections 10.03 and 10.04, sell or otherwise dispose of such Units or Depositary Units.

6.04. Compensation Plans. In addition to the Unit Option Plan described in the Registration Statement, the General Partner shall have the power and authority to cause the Partnership to pay pensions, and establish and carry out pension, profit- sharing, bonus, purchase, option, savings, thrift and other retirement, incentive and benefit plans, trusts and provisions for the General Partner, employees of the General Partner or the Partnership, and any partner, director or officer of the General Partner, including plans, trusts and provisions which may provide for the ownership, acquisition, holding or disposition of Units or any other securities of the Partnership, and to the full extent permitted by law the General Partner may indemnify and maintain insurance on behalf of any fiduciary of such plans, trusts or provisions, including, without limitation, health insurance, medical and dental reimbursement, life insurance, accident insurance, disability insurance and other plans, trusts or provisions.

6.05. Distributions. The General Partner shall have the power and authority to cause the Partnership, from time to time and to the extent deemed appropriate by the General Partner in its sole and absolute discretion, to distribute cash or Partnership Assets to the General Partner and the Record Holders in accordance with Article V. Nothing in this Agreement or this Section 6.05 shall serve as a limitation on the General Partner's right to retain or use Partnership Assets or the revenues of the Partnership as, in the sole and absolute discretion of the General Partner, may be required to satisfy the anticipated present and future cash needs of the Partnership, whether for operations, expansion, improvements, acquisitions or otherwise.

6.06. Election to the Governed by Successor Limited Partnership Law. The General Partner may, in its sole and absolute discretion and without any vote or concurrence of the Record Holders,

elect for the Partnership to be governed by any statutes adopted to succeed or replace the Delaware Act on or after the date any part of such successor or replacement statute takes effect and procure any permits, orders or approvals of any governmental authority in connection with such election.

6.07. Operating Partnership. The General Partner, in its sole and absolute discretion, may cause the Operating Partnership to be dissolved or to be merged into, consolidated or combined with the Partnership without the need for any vote or consent by the Record Holders. Upon any such merger, consolidation or combination, the interests of the Limited Partners and Record Holders in the Partnership and the compensation and reimbursements to the General Partner shall be adjusted and this Agreement shall be amended without the need for any vote of the Record Holders to provide the same relative

interests, compensation and reimbursements as they had in the Partnership and Operating Partnership, taken together, prior to such merger, consolidation or combination.

6.08. Restrictions on Authority of General Partner.

(a) Anything in this Agreement to the contrary notwithstanding, the General Partner shall have no authority to cause the Partnership to terminate the Depositary Agreement unless such termination (i) is in connection with the Partnership entering into a similar agreement with another depositary selected by the General Partner, in its sole and absolute discretion, (ii) is as a result of the receipt of an opinion of counsel for the Partnership to the effect that such termination is necessary in order for the Partnership to avoid being treated as an association taxable as a corporation for federal income tax purposes or to avoid being in violation of any applicable federal or state securities laws, or (iii) is in connection with the dissolution of the Partnership pursuant to Article XIII.

(b) Anything in this Agreement to the contrary notwithstanding, the General Partner shall have no authority to cause the Partnership, in its capacity as sole limited partner of the Operating Partnership, to consent to any proposal submitted for the approval of the limited partners of the Operating Partnership unless the Record Holders, pursuant to Section 14.11(b) hereof, vote to approve such proposal in at least the same percentage as is required by the OLP Partnership Agreement for the approval of such proposal by the limited partners of the Operating Partnership.

6.09. Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser, including any purchaser of property from the Partnership

or any other Person dealing with the Partnership, shall be required to look to the application of proceeds hereunder to verify any representation by the General Partner as to the extent of the interest in the assets of the Partnership that the General Partner is entitled to encumber, sell or otherwise use, and any such lender or purchaser shall be entitled to rely exclusively on the representations of the General Partner as to its authority to enter into such financing or sale arrangements and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Record Holder hereby waives any and all defenses or other remedies that may be available against such lender, purchaser or other Person to contest, negate or disaffirm any action of the General Partner in connection with any sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain that the terms of this Agreement have been complied with, or be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative; and every contract, agreement, deed, mortgage, security agreement, promissory note or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and/or delivery thereof this Agreement was in full force and effect, (b) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership, and (c) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

6.10. Title to Partnership Assets. Title to Partnership Assets, whether real, personal or mixed, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner or Record Holder individually or collectively, shall have any ownership interest in such Partnership Assets or any portion thereof. Title to any or all of the Partnership Assets may be held in the name of the Partnership or the General Partner, or of one or more nominees, as the General Partner may determine. The General Partner hereby declares and warrants that any Partnership Assets for which legal title is held in the name of the General Partner shall be held in trust by the General Partner for the use and benefit of the Partnership in accordance with the terms or provisions of this Agreement. All Partnership Assets shall be recorded as the property of the Partnership on its books and

records, irrespective of the name in which legal title to such Partnership Assets is held.

6.11. Other Business Activities of Partners. Any Partner, Record Holder or Affiliate thereof (including, without limitation, the General Partner and any of its Affiliates) may have other business interests or may engage in other business ventures of any nature or description whatsoever, whether presently existing or hereafter created, including, without limitation, the ownership, leasing, management, operation, franchising, syndication and/or development of real estate, and may compete, directly or indirectly, with the business of the Partnership. No Partner, Record Holder or Affiliate thereof shall incur any liability to the Partnership as the result of such Partner's, Record Holder's or Affiliate's pursuit of such other business interests and ventures and competitive activity, and neither the Partnership nor any of the Partners or Record Holders shall have any right to participate in such other business interests or ventures or to receive or share in any income or profits derived therefrom.

6.12. Transactions with General Partner or Affiliates. In addition to transactions specifically contemplated by the terms and provisions of this Agreement, the Partnership is expressly permitted to enter into other transactions with the General Partner or any of its Affiliates, including, without limitation, buying and selling properties from or to the General Partner and any of its Affiliates and borrowing and lending money from or to the General Partner or any of its Affiliates, subject to the limitations contained in this Agreement, the Delaware Act and in the Registration Statement.

6.13. Audit Committee; Resolution of Conflicts of Interest.

(a) On the Closing Date, the General Partner shall form an Audit Committee to be comprised of directors of the General Partner not affiliated with the General Partner or its Affiliates other than as a director of the General Partner. The functions of the Audit Committee shall be: (i) to review the Partnership's financial and accounting policies and procedures; (ii) to review the results of any audits of the books and records of the Partnership made by the Accounting Firm or other outside auditors; (iii) to review the allocation of overhead expenses in connection with the reimbursement of the expenses of the General Partner pursuant to Section 7.01; (iv) to review any resolutions of conflicts of interest made by the General Partner pursuant to Section 6.13(b); and (v) to review certain other determinations of the General Partner made pursuant to this Agreement.

(b) Unless otherwise expressly provided in this Agreement, (i) whenever a conflict of interest exists or arises between the General Partner or any of its Affiliates, on the one hand, and the Partnership, the Operating Partnership, or any Record Holder, on the other hand, or (ii) whenever this Agreement or any other

agreement contemplated herein provides that the General Partner shall act in a manner which is, or provide terms which are, fair and/or reasonable to the Partnership, the Operating Partnership, or any Record Holder, the General Partner shall resolve such conflict of interest, take such action or provide such terms considering, in each case, the relative interests of each party to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles, and in the absence of bad faith by the General Partner, the resolution, action or terms so made, taken or provided by the General Partner shall not constitute a breach of this Agreement or any other agreement contemplated herein.

(c) The Audit Committee shall periodically review any determinations of the General Partner made pursuant to Section 6.13(b).

(d) Whenever in this Agreement the General Partner is permitted or required to make a decision (i) in its "sole discretion" or "discretion", with "absolute discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as

it desires and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Partnership, the Operating Partnership or the Record Holders, or (ii) in its "good faith" or under another express standard, the General Partner shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein.

6.14. Liability of General Partner to Partnership and Limited Partners.

(a) The General Partner and its Affiliates and all partners, shareholders, directors, officers, employees or agents of the General Partner and its Affiliates shall not be liable (for monetary damages or otherwise) to the Partnership, the Limited Partners, the Record Holders, the Non-Consenting Investors or the Subsequent Transferees for errors in judgment or for breach of fiduciary duty as the General Partner of the Partnership or as a partner, shareholder, director, officer, employee or agent of the General Partner of the Partnership or any of its Affiliates, except for liability (i) for any breach of such Person's duty of loyalty to the Partnership, as such duty of loyalty may be set forth in or modified by this Agreement, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law or (iii) for any transaction from which such Person has derived an improper benefit.

(b) The General Partner may exercise any of the powers granted to it by this Agreement and may perform any of the duties imposed upon it hereunder either directly or indirectly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

6.15. Indemnification of General Partner and Affiliates.

(a) The Partnership shall, to the fullest extent permitted by law, indemnify and hold harmless the General Partner, its Affiliates, and all officers, directors, employees and agents of the General Partner and its Affiliates (individually, an "Indemnitee") from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise by reason of its status as (x) the General Partner or an Affiliate thereof or (y) a partner, shareholder, director, officer, employee or agent of the General Partner or an Affiliate thereof or (z) a Person serving at the request of the Partnership in another entity in a similar capacity, which relate to, arise out of or are incidental to the Partnership, its property, business, affairs or the Exchange, including, without limitation, liabilities under the federal and state securities laws, regardless of whether the Indemnitee continues to be a General Partner, an Affiliate, or an officer, director, employee or agent of the General Partner or of an Affiliate thereof at the time any such liability or expense is paid or incurred, if (i) the Indemnitee acted in good faith and in a manner it believed to be in, or not opposed to, the best interests of the Partnership, and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful and (ii) the Indemnitee's conduct did not constitute willful misconduct. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified in (i) or (ii) above.

(b) Expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Section 6.15 shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnitee to repay such amount unless it

shall be determined that such Person is entitled to be indemnified as authorized

in this Section 6.15.

(c) The indemnification provided by this Section 6.15 shall be in addition to any other rights to which those indemnified may be entitled under any agreement, vote of the Record Holders, as a matter of law or equity, or otherwise, both as to an action in the Indemnitee's capacity as a General Partner, an Affiliate or as an officer, director, employee or agent of a General Partner or an Affiliate, and as to an action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Partnership may purchase and maintain insurance on behalf of the General Partner and such other Persons as the General Partner shall determine against any liability that may be asserted against or expense that may be incurred by such Person in connection with the Exchange and the activities of the Partnership, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) Except as set forth in the next sentence below, any indemnification hereunder shall be satisfied solely out of the assets of the Partnership. The Record Holders shall not be subject to personal liability by reason of these indemnification provisions.

(f) An Indemnitee shall not be denied indemnification in whole or in part under this Section 6.15 by reason of the fact that the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(g) The provisions of this Section 6.15 are for the benefit of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Persons.

6.16. No Management by Record Holders. No Record Holder (other than the General Partner or any agent or employee of the General Partner, in its capacity as such, if such Person shall also be a Record Holder) shall take part in the day-to-day management, operation or control of the business and affairs of the Partnership. The Record Holders shall not have any right, power or authority to transact any business in the name of the Partnership or to act for or on behalf of or to bind the Partnership. The Record Holders shall have no rights other than those specifically provided herein or granted by law where consistent with a valid provision hereof. In the event any laws, rules or regulations

applicable to the Partnership, or to the sale or issuance of the Units in connection with the Exchange, require a Record Holder, or any group or class thereof, to have certain rights, options, privileges or consents not granted by the terms of this Agreement, then such Record Holders shall have and enjoy such rights, options, privileges and consents so long as (but only so long as) the existence thereof does not result in a loss of the limitation on liability enjoyed by the Record Holders and the Partnership (as the sole limited partner of the Operating Partnership) under the Delaware Act or the applicable laws of any other jurisdiction.

6.17 National Securities Exchange Listing. The General Partner shall have full power and authority on behalf of the Partnership to file all documents and instruments and to do all things necessary or advisable to list the Depositary Units for trading on a National Securities Exchange and to comply with any rule, regulation or guideline of any National Securities Exchange on which the Depositary Units are listed for trading.

6.18. Other Matters Concerning General Partner.

(a) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The General Partner may consult with legal counsel,

accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it and any opinion of any such Person as to matters that the General Partner reasonably believes to be within its professional or expert competence (including, without limitation, any opinion of legal counsel to the effect that the Partnership would "more likely than not" prevail with respect to any matter) shall be full and complete authorization and protection in respect to any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(c) Anything in this Agreement to the contrary notwithstanding, the General Partner represents, covenants, warrants and agrees with the Record Holders and the Partnership as follows:

(i) It shall not permit any Person who makes a non-recourse loan to the Partnership to acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership, other than as a secured creditor; and fees, insurance brokerage commissions and real estate brokerage commissions.

(ii) It shall not provide any Record Holder with any mandatory or discretionary right to purchase any type of security the General Partner or of Affiliates thereof in connection with such Record Holder's Partnership Interest.

(d) The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through a duly appointed attorney or attorneys-in-fact. Each such attorney or attorney-in-fact shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform, under the supervision of the General Partner, all and every act and duty which is permitted or required to be done by the General Partner hereunder. Each such appointment shall be evidenced by a duly executed power of attorney giving and granting to each such attorney or attorney-in-fact full power and authority to do and perform all and every act and thing requisite and necessary to be done by the General Partner in connection with the Partnership.

ARTICLE VII

Reimbursement of Expenses

7.01. Reimbursement of Expenses of General Partner.

(a) The Partnership shall reimburse the General Partner for all expenses, disbursements and advances reasonably incurred by the General Partner in connection with the organization of the Partnership, the qualification of the Partnership and the General Partner to do business in any state in which the General Partner determines that such qualification is advisable, the registration of the Units under applicable federal and state securities laws in connection with the Exchange, the offering, sale and distribution of the Units pursuant to the Exchange and the listing of the Depositary Units on a National Securities Exchange.

(b) The Partnership shall reimburse the General Partner for all allocable direct and indirect overhead expenses, including, without limitation, salaries and rent, incurred by the General Partner in connection with its conduct of the business and affairs of the Partnership. Such allocations shall be subject to periodic review by the Audit Committee.

7.02. Remuneration of General Partner and Affiliates. It is hereby acknowledged by the parties hereto that the Operating Partnership shall pay to the General Partner and its Affiliates certain forms of compensation and fees. Such compensation and fees are described with more particularity in the OLP Partnership Agreement or the Registration Statement and include soliciting dealer fees, property management fees, reinvestment incentive

fees, insurance brokerage commissions and real estate brokerage commissions.

ARTICLE VIII

Bank Accounts; Books and Records;
Fiscal Year; Reports; Tax Matters

8.01. Bank Accounts. All funds of the Partnership shall be deposited in its name in such checking and savings accounts, time deposits, certificates of deposit or other accounts at such banks or other financial institutions as shall be designated by the General Partner from time to time, and the General Partner shall arrange for the appropriate conduct of any such account or accounts. The General Partner shall not permit funds of the Partnership to be commingled with funds of the General Partner, any Affiliate of the General Partner, or any other Person; provided, however, that nothing herein shall preclude any investment of Partnership funds in a mutual fund or similar entity for which a separate account is maintained on behalf of each participant. The General Partner may use the funds of the Partnership as compensating balances for its benefit, provided that such funds do not directly or indirectly secure, and are not otherwise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, partner, employee or Affiliate thereof.

8.02. Books and Records.

(a) The General Partner shall keep, or cause to be kept, accurate, full, and complete books and accounts with respect to the Partnership, showing assets, liabilities, income, operations, transactions and the financial condition of the Partnership. Such books and accounts shall be prepared and maintained on the accrual basis of accounting in accordance with generally accepted accounting principles. The General Partner shall maintain and preserve all Partnership books and records for such period as the General Partner, in its sole and absolute discretion, shall determine necessary or appropriate, subject to any requirements of state or federal law.

(b) Except for information kept confidential by the General Partner pursuant to Section 8.02(c), all books, records, reports and accounts of the Partnership shall be open to inspection by any Record Holder or duly authorized representatives of such Record Holder on reasonable notice at any reasonable time during business hours, for any purpose reasonably related to the Person's interest as a Record Holder, as the case may be, and such Person or its representatives at its expense shall have the further right to make copies or excerpts therefrom. Record Holders may request an

accounting of Partnership affairs whenever circumstances render it just and reasonable, but the cost of furnishing of such information or conducting such accounting shall be at such Person's expense. None of the Record Holders or their representatives shall divulge to any other Person any confidential or proprietary data, information or property or any trade secrets of the Partnership. A copy of the list of names and addresses of all Record Holders shall be furnished to any Partner, Record Holder or their representatives upon request in person or by mail to the General Partner. The Person requesting such list shall pay the cost of copying the list and mailing before the list is delivered.

(c) Anything in this Section 8.02 to the contrary notwithstanding, the General Partner may keep confidential from the Record Holders, and each Record Holder's duly authorized representatives, for such period of time as the General Partner deems reasonable, any information that the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or by agreements with third parties to keep confidential.

8.03. Fiscal Year. The Fiscal Year of the Partnership for financial and federal, state, and local income tax purposes initially shall be the calendar year. The General Partner shall have authority to change the beginning and ending dates of the Fiscal Year if the General Partner, in its sole and absolute discretion, subject to approval by the Internal Revenue Service, shall determine such change to be necessary or appropriate to the business of the Partnership, and shall give written notice of any such change to the Record

Holders within thirty (30) days after the occurrence thereof.

8.04. Reports.

(a) The General Partner shall use its best efforts to prepare and furnish within ninety (90) days after the close of the calendar year to each Person who was a Record Holder on the last day of any month during the Fiscal Year the information necessary for the preparation of such Person's United States federal income tax return and any United States or state income tax returns or the tax returns of any other jurisdiction required of such Person as a result of the operations of the Partnership. The Record Holders agree to furnish the General Partner with such information as may be necessary or helpful in preparing the tax returns or other filings of the Partnership.

(b) As soon as practicable, but in no event later than one hundred twenty (120) days after the close of each Fiscal Year, the General Partner shall mail or deliver to each Record Holder as of the last day of that Fiscal Year reports containing financial statements of the Partnership for such Fiscal Year, including a balance sheet, statements of operations, changes in Partners' equity and changes in financial position. Such statements are to be prepared in accordance with generally accepted accounting principles and audited and certified by the Accounting Firm.

(c) After the close of each fiscal quarter, except the last fiscal quarter of each Fiscal Year, the General Partner shall mail or otherwise furnish to each Record Holder as of the last day of such fiscal quarter a quarterly report for the fiscal quarter containing such financial and other information as the General Partner deems appropriate.

(d) The General Partner shall provide to the Record Holders such other reports and information concerning the business and affairs of the Partnership (i) as the General Partner, in its sole and absolute discretion, may deem necessary or appropriate, or (ii) to the extent not provided for in this Agreement, as may be specifically required by the Delaware Act or by any other law or any regulation of any regulatory body applicable to the Partnership.

(e) The General Partner shall provide any of the reports or other information referred to in this Section 8.04 to such federal, state or local governments, governmental agencies or other regulatory entities as the General Partner, in its sole and absolute discretion, may deem necessary or appropriate.

8.05. Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the General Partner.

8.06. Where Maintained. The books, accounts and records of the Partnership at all times shall be maintained at the Partnership's principal office or, at the option of the General Partner, at the principal place of business of the General Partner.

8.07. Preparation of Tax Returns. The General Partner, at the expense of the Partnership, shall arrange for the preparation and timely filing of all returns of the Partnership showing all income, gains, deductions, and losses necessary for federal and state income tax purposes. The classification, realization and recognition of income, gains, losses and deductions and other items of the Partnership shall be on the accrual method of accounting for federal income tax purposes.

8.08. Tax Elections. Except as otherwise specifically provided herein, the General Partner shall, in its sole and absolute discretion, determine whether to make any available income tax election. The General Partner shall cause the Partnership to make the Section 754 Election in accordance with applicable regulations thereunder. The General Partner shall have the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the interests of the Record Holders; provided, however, that the General Partner shall not seek to revoke any such election unless the General Partner has received an opinion of counsel for the Partnership to the

effect that such revocation would not cause (a) the loss of limited liability of the Record Holders under this Agreement or of the Partnership as the sole limited partner of the Operating Partnership and (b) the Partnership to be treated as an association taxable as a corporation for federal income tax purposes.

8.09. Tax Controversies. Subject to the provisions hereof, the General Partner is designated as the "tax matters partner" (as defined in Section 6231 of the Code) of the Partnership and is authorized and required to represent the Partnership (at the expense of the Partnership) in connection with all examinations of the affairs of the Partnership, by any federal, state or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the Partnership for professional services and costs associated therewith. Each Record Holder agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner in connection with the conduct of all such proceedings.

8.10. Taxation as a Partnership. No election shall be made by the Partnership, the General Partner, any Limited Partner, Record Holder, Non-Consenting Investor or Subsequent Transferee to be excluded from the application of any of the provisions of Subchapter K, Chapter I of Subtitle A of the Code or from any similar provisions of any state tax laws.

8.11. Determination of Adjusted Basis in Connection with Section 754 Election. In determining adjustments to the General Partner's or a Record Holder's proportional share of the adjusted basis of Partnership Assets in connection with the Section 754 Election, the General Partner, for purposes of accounting simplicity, shall treat each General Partner or Record Holder who acquires one or more Units or Depositary Units at any time during a calendar month as having acquired all such Units or Depositary Units on the last day of such calendar month at a price equal to the lowest Unit Price of the Units or Depositary Units during such month, irrespective of the date on or price at which such Units or Depositary Units actually were acquired by such General Partner or

Record Holder during such month. The General Partner shall be authorized to alter these accounting conventions to conform with any regulations issued by the Treasury Department or rulings or advice of the Internal Revenue Service, as the General Partner shall determine necessary or appropriate. To the extent the General Partner is required to determine the adjusted basis of any Partnership Assets with respect to which the Code requires that records of such adjusted basis be kept and maintained by the Record Holders, the General Partner may request information regarding such adjusted basis from such Record Holders, in writing, and such Record Holders shall furnish such information to the General Partner within thirty (30) calendar days after such request is mailed by the General Partner.

8.12. FIRPTA and State Income Tax Withholding.

(a) Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines to be necessary or appropriate to cause the Partnership to comply with any withholding requirements established under Sections 1445 and 1446 of the Code with regard to (i) the sale of "United States real property interests" (as defined in the Code), (ii) the distribution of cash or property to the General Partner or any Record Holder who is a "foreign person" (as defined in Treasury Regulation Section 1.1445-2T(b)(2)(i)(c)) or (iii) the transfer of Units or Depositary Units.

(b) In its sole and absolute discretion and as provided for in Treasury Regulations under Sections 1445 and 1446 of the Code, the General Partner may elect to withhold a portion of any distributions made to the General Partner and any Record Holder who are "foreign persons" or who fail to provide to the Partnership an appropriate certificate in accordance with the applicable provisions of such Treasury Regulations. In addition, the General Partner may elect, in its sole and absolute discretion, to withhold from amounts distributable to the General Partner and any Record Holder, portions of such amounts in respect of any state income tax payable in respect of such Partner's allocable share of the Partnership's taxable income.

8.13. Loss of Partnership Status. In the event that the General Partner at any time shall determine that the Partnership does not qualify, or no longer will qualify, as a partnership for federal income tax purposes, then the General Partner shall have the right, but not the obligation, without the consent of the Record Holders, to take any such action as it, in its sole and absolute discretion, determines to be in the interests of the Record Holders in connection therewith or as a result thereof, including, without limitation to cause the Partnership to be

reorganized so as to qualify as a "real estate investment trust" within the meaning of Section 856 of the Code.

8.14. Opinions Regarding Taxation. Notwithstanding any other provision of this Agreement, the requirement, as a condition to any action proposed to be taken under this Agreement, that the Partnership be furnished an opinion of counsel for the Partnership to the effect that the proposed transaction would not result in the Partnership being treated as an association taxable as a corporation for federal income tax purposes, shall not be applicable if the Partnership is at such time treated in all material respects as an association taxable as a corporation for federal income tax purposes.

ARTICLE IX

Issuance and Deposit of Certificates of Partnership Interest

9.01. Issuance of Certificates. On the Closing Date, the General Partner shall cause the Partnership to issue one or more Certificates evidencing the aggregate whole number of Units to which the API Investors in API Partnerships that participate in the Exchange are entitled to be issued pursuant to the Exchange and shall deposit such Certificate(s) with the Depositary and cause the Depositary to issue Depositary Units as specified in the Merger Agreements. Such Certificates shall be substantially in the form attached hereto as Exhibit A. Upon the issuance of Units to Additional Limited Partners pursuant to Section 4.05, the General Partner shall cause the Partnership to issue one or more Certificates representing in the aggregate the whole number of units to be so issued to each such Additional Limited Partner. Upon the transfer of a Unit in accordance with Article X, the General Partner shall cause the Partnership to issue replacement Certificates, according to such procedures as the General Partner shall establish. The Certificates issued pursuant to this Section 9.01 shall, upon issuance, be deposited with the Depositary pursuant to the Depositary Agreement, and the Depositary will issue Depositary Receipts for the Depositary Units represented thereby.

9.02. Lost, Stolen, Destroyed or Mutilated Certificates or Depositary Receipts. The Partnership shall issue or cause to be issued a new Certificate or Depositary Receipt in place of any Certificate or Depositary Receipt previously issued if the Record Holder of such Certificate or Depositary Receipt:

(a) makes proof, in form and substance satisfactory to the General Partner, of the loss, theft or destruction, and of such Record Holder's ownership, of such previously issued Certificate or Depositary Receipt;

(b) surrenders any mutilated Certificate or Depositary Receipt;

(c) requests the issuance of a new Certificate or Depositary Receipt before the Partnership has notice that such previously issued Certificate or Depositary Receipt has been acquired by a purchaser for value in good faith and without notice of an adverse claim;

(d) if requested by the General Partner, delivers to the Partnership a bond, in form and substance satisfactory to the General Partner, with such surety or sureties and with fixed or open penalty, as the General Partner may direct, to indemnify the Partnership and the Depositary against any claim that may be made on account of the alleged loss, theft, destruction or mutilation of such previously issued Certificate or Depositary Receipt; and

(e) satisfies any other reasonable requirements imposed by the General Partner.

When a previously issued Certificate or Depositary Receipt has been lost, stolen, destroyed or mutilated and the Record Holder fails to notify the Partnership within a reasonable time after he has notice of such event, and a transfer of Units represented by the Certificate or Depositary Receipt is registered before such Partnership receives such notification, the Record Holder shall be precluded from making any claim against the Partnership, the Depositary or any Transfer Agent with respect to such transfer or for a new Certificate or Depositary Receipt.

9.03. Record Holder. The Partnership shall be entitled to treat each Record Holder as the beneficial owner of any Units, Depositary Units or other securities of the Partnership, as the case may be, and, accordingly, shall not be required to recognize any equitable or other claim or interest in or with respect to such Units, Depositary Units or other securities of the Partnership on the part of any other Person, regardless of whether it shall have actual or other notice thereof, except as otherwise provided by this Agreement or required by law or any applicable rule, regulation, guideline, or requirement of any National Securities Exchange on which the Units, Depositary Units or other securities of the Partnership are listed for trading. Without limiting the foregoing, when a Person (such as a broker, dealer, bank, trust company or clearing corporation, or an agent of any of the foregoing) is acting as a nominee, agent or in some other representative capacity for another Person in acquiring and/or holding Units, Depositary Units or other securities of the Partnership, as between the Person and such representative Persons, such representative Persons (a) shall be the Record

Holder with respect to such Units, Depositary Units or other securities of the Partnership, (b) must execute a Transfer Application and (c) shall be bound by the Partnership Agreement and shall have the obligations of a Record Holder hereunder and as provided for herein.

ARTICLE X

Transfer of Interests and Units

10.01. Transfer.

(a) The term "transfer," when used in this Article X with respect to a Partnership Interest or Unit, shall be deemed to refer to a transaction by which the Record Holder of a Unit assigns the Partnership Interest evidenced thereby to another Person as Subsequent Transferee and includes any sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or other disposition.

(b) No Partnership Interest or Unit shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article X. Any transfer or purported transfer of any Partnership Interest or Unit not made in accordance with this Article X shall be null and void.

10.02. Transfers of Interest of General Partner.

(a) Prior to the tenth anniversary of the Closing Date, the General Partner is prohibited from transferring its Partnership Interest as a General Partner to any Person other than an Affiliate of the General Partner. If, after the tenth anniversary of the Closing Date, the General Partner desires to sell or transfer all or any portion of the General Partner's Partnership Interest as a General Partner to a Person who is not a General Partner, such transfer shall be permitted if (and only if):

(i) such transfer and the admission of the transferee as a general partner of the Partnership is approved by a Majority Interest, unless the transferee is an Affiliate of the transferring General Partner, in which case no such approval of the Record Holders shall be required unless provided for in the Delaware Act.

(ii) the transferee consents to be bound by this Agreement and has the necessary legal authority to act as a general partner of a partnership; and

(iii) the Partnership receives an opinion of counsel that such transfer and admission (A) would not cause the loss of limited liability of the Record Holders under this Agreement or of the Partnership as the sole limited partner or the Operating Partnership and (B) would not cause the Partnership to be treated as an association taxable as a corporation for federal income tax purposes.

(b) Neither Section 10.01(a) nor any other provision of this Agreement shall be construed to prevent (and each Partner, by requesting and being granted admission to the Partnership, is deemed to consent to):

(i) the transfer by any corporate General Partner of such corporate General Partner's Partnership Interest as a General Partner upon its merger or consolidation with another Person or the transfer by it of all or substantially all of its assets to another Person, provided such Person (A) has a net worth not less than that of the General Partner, (B) accepts and agrees to be bound by the terms and conditions of this Agreement and (C) furnishes to the Partnership an opinion of counsel to the effect that such merger, consolidation, transfer or assumption (1) would not cause the loss of limited liability of the Record Holders under this Agreement or of the Partnership as the sole limited partner of the Operating Partnership and (2) would not cause the Partnership or the Operating Partnership to be treated as an association taxable as a corporation for federal income tax purposes;

(ii) the transfer by the General Partner of all or any part of its interest in items of Partnership income, gains, losses, deduction, credits, distributions or surplus; or

(iii) the General Partner's mortgaging, pledging, hypothecating or granting a security interest in all or any part of its Partnership Interest as a General Partner as collateral for a loan or loans.

10.03. Transfer of Units. Units that are not on deposit in the Deposit Account are not transferable except upon death, by operation of law, by transfer to the General Partner for the account of the Partnership or to the Depositary for deposit in the Deposit Account; provided, however, that the General Partner and its Affiliates may, without restriction, transfer between or among themselves Units that are not on deposit in the Deposit Account.

10.04. Transfer of Depositary Units.

(a) Except as specifically provided in Section 10.03, the Partnership shall not recognize any transfer of Units or interests

herein except by a transfer of Depositary Units. Depositary units may be transferred only in the manner provided in and subject to the conditions set forth in the Depositary Agreement.

(b) No transfer of Depositary Units shall be recorded or otherwise recognized by the Partnership or the Depositary unless and until the Subsequent Transferee of such Depositary Units shall execute and deliver a Transfer Application to the Depositary. By executing and delivering a Transfer Application to the Depositary, a Subsequent Transferee shall be deemed (i) to have applied to be admitted to the Partnership as a Substituted Limited Partner pursuant to Article XI with respect to the Depositary Units transferred, (ii) to have agreed to comply with and be bound by this Agreement, whether or not such Subsequent Transferee is admitted as a Substituted Limited Partner with respect to the Depositary Units transferred, and to execute any document that the General Partner may reasonably require to be executed in connection with such transfer or with the admission of such Subsequent Transferee as a Substituted Limited Partner pursuant to Article XI with respect to the Depositary Units transferred, (iii) to have granted to the General Partner and authorized officers and attorneys-in-fact of the General Partner the powers of attorney

provided for in Article XV of this Agreement and the Depositary Agreement and (iv) to have made the waivers and given the approvals contained in this Agreement and the Depositary Agreement. A transferor of Depositary Units shall have no duty or obligation to ensure the execution and delivery of a Transfer Application by a Subsequent Transferee and shall not be liable to such Subsequent Transferee if such Subsequent Transferee neglects or determines not to execute and deliver a Transfer Application to the Depositary. After executing and delivering a Transfer Application to the Depositary and pending admission as a Substituted Limited Partner pursuant to Article XI with respect to Depositary Units transferred pursuant to this Section 10.04, the Subsequent Transferee of one or more such Depositary Units transferred pursuant to this Section 10.04 shall be a Record Holder in respect of such Depositary Units and shall be entitled to all rights of assignees under the Delaware Act and all rights of Record Holders under this Agreement, whether or not such Subsequent Transferee is a Limited Partner with respect to other Depositary Units or Units.

(c) Each distribution in respect of a Depositary Unit (or a Unit withdrawn from the Deposit Account) shall be paid by the Partnership, directly or through the Depositary or through any other person or agent, only to the Record Holder of such Depositary Unit (or such Unit withdrawn from the Deposit Account) as of the Record Date or Record Dates set for such distribution. Such payment shall constitute full payment and satisfaction of the Partnership's liability in respect of such payment, regardless of

any claim of any Person who may have an interest in or with respect to such payment by reason of any assignment or otherwise.

(d) Notwithstanding anything to the contrary herein, the Partnership shall not recognize for any purpose any purported transfer by a Record Holder of all or any part of a Depositary Unit held by such Record Holder until the Partnership shall have received (A) the written advice by the Depositary of the transfer of the Depositary Receipts evidencing such Depositary Units or (B) in the case of Depositary Units held by the same nominee for the transferor and the transferee, the receipt of written notification in accordance with Section 16.02 hereof from the nominee holder of the date of the transfer of such Depositary Units.

(e) Any holder of a Unit or a Depositary Receipt (including a Subsequent Transferee thereof) conclusively shall be deemed, by acceptance of such Unit or Depositary Receipt, to have agreed to comply with and be bound by all terms and conditions of this Agreement, with the same effect as if such holder had executed a Transfer Application, whether or not such holder in fact has executed such a Transfer Application. A request by any broker, dealer, bank, trust company, clearing corporation or nominee holder to register transfer of a Depositary Unit, however signed (including by any stamp, mark or symbol executed or adopted with intent to authenticate the Depositary Receipt), shall be deemed to be an execution of a Transfer Application by and on behalf of the beneficial owner of such Depositary Unit.

ARTICLE XI

Admission of Partners

11.01. Admission of Limited Partners.

(a) On the Closing Date, the General Partner shall admit to the Partnership as Record Holders all those Persons to whom Units are issued in accordance with Section 4.03 hereof. Each such party shall be deemed to execute a counterpart of this Agreement (either individually or by its attorney or agent) by signing the Consent Form and thereby agree to be bound by the terms of this Agreement.

(b) A Non-Consenting Investor shall neither become a Record Holder with respect to Units issued to the Nominee in respect of such Non-Consenting Investor's interests in the API Partnerships nor be admitted to the Partnership as a Substituted Limited Partner in respect of such Units until such Non-Consenting Investor has delivered to the Depositary (i) a duly executed Transfer Application and (ii) to the extent not theretofore delivered pursuant to the Exchange, all API Certificates, or, if such certificates

are lost or misplaced or have been destroyed or mutilated, an executed Lost Certificate Affidavit. Upon compliance with the preceding sentence, the Depositary shall take such actions as may be appropriate to cause such Non-Consenting Investor to become a Record Holder and be admitted as a Substituted Limited Partner with respect to Units held by the Nominee for the account of such Non-Consenting Investor.

11.02. Admission of Substituted Limited Partners.

(a) Upon a transfer of a Depositary Unit in accordance with Article X, the transferor shall, subject to the provisions of Section I0.04(d), have the power to give, and by transfer of a Depositary Unit, shall be deemed to have given, the Subsequent Transferee of such Person's Depositary Unit the right to apply to become a Substituted Limited Partner with respect to the Depositary Unit acquired, subject to the conditions of and in the manner permitted under this Agreement. Subject to the foregoing, each Subsequent Transferee of a Depositary Unit (including any Person, such as a broker, dealer, bank, trust company, clearing corporation, other nominee holder or an agent of any of the foregoing, acquiring such Depositary Unit for the account of another Person) shall be deemed to have applied to become a Substituted Limited Partner with respect to the Depositary Unit transferred to such Person by executing and delivering a Transfer Application at the time of such transfer as provided in Section 10.04. A Subsequent Transferee of a Depositary Unit who does not execute and deliver a Transfer Application to the Depositary shall not be a Record Holder, shall not be admitted as a Substituted Limited Partner and shall only have the right to transfer or assign the Depositary Units held by him to a purchaser or other transferee. Such a Subsequent Transferee in addition shall not be entitled to receive distributions made by the Partnership pursuant to Article V nor be entitled to vote on Partnership matters or any other rights to which Limited Partners are entitled under the Delaware Act or pursuant to this Agreement. After executing and delivering a Transfer Application to the Depositary and pending admission to the Partnership as a Substituted Limited Partner with respect to the Depositary Units transferred to him pursuant to Section 10.04, a Subsequent Transferee shall be a Record Holder with respect to such Depositary Units and shall be entitled to all rights of assignees under the Delaware Act and all rights of Record Holders under this Agreement.

(b) Under the terms of the Depositary Agreement, the Depositary is obligated to prepare as of the close of business on the last Business Day of each month, a list or other appropriate evidence of all transfers of Depositary Units registered by the Transfer Agent since the last Business Day of the preceding month (hereinafter called the "transfer record") and, as promptly as

practicable after the last Business Day of each month, to submit transfer record to the General Partner. Within thirty (30) days after receipt of the transfer record by the General Partner the General Partner shall determine whether or not to admit as a Substituted Limited Partner any one or more of the Subsequent Transferees listed in such transfer record, and shall, if required, amend (or cause to be amended) this Agreement in accordance with Section 14.01 and shall prepare and record (or cause to be prepared and recorded) in such jurisdictions (if any) as shall be necessary, an amendment to the Certificate of Limited Partnership pursuant to Section 2.01, or to any other filing made in such jurisdiction, to reflect the admission as Substituted Limited Partners of those Subsequent Transferees that the General Partner, in its sole and absolute discretion, determines shall be admitted as Substituted Limited Partners.

(c) Anything in this Section 11.02 to the contrary notwithstanding, no Person shall be admitted as a Substituted Limited Partner with respect to a Depositary Unit acquired by transfer without the written consent of the General Partner (whether or not such Record Holder is a Limited Partner with respect to other Units or Depositary Units), which consent may be withheld or granted in the sole and absolute discretion of the General Partner. Each Record Holder consents to the admission of each Substituted Limited Partner pursuant to the terms of this Agreement, and no further consent of the Record Holders, other than that of the General Partner as aforesaid, shall be required to effect such admission.

(d) The admission of a Subsequent Transferee as a Substituted

Limited Partner with respect to a Depositary Unit acquired by transfer shall become effective on the date that the General Partner gives its written consent to such admission and the name of such Subsequent Transferee is recorded on the books and records of the Partnership.

(e) Any Record Holder who transfers all of his Depositary Units with respect to which he had been admitted as a Record Holder shall cease to be a Record Holder of the Partnership upon a transfer of such Depositary Units in accordance with Article X and shall have no further rights as a Record Holder in or with respect to the Partnership (whether or not the Subsequent Transferee of such former Record Holder is admitted to the Partnership as a Substituted Limited Partner).

(f) No person shall be entitled to become a Substituted Limited Partner with respect to any Depositary Units except in accordance with this Section 11.02.

11.03. Admission of Successor General Partner. A successor General Partner selected pursuant to Sections 12.01 or 12.02 or the transferee of all or any portion of the Partnership Interest of a General Partner pursuant to Section 10.02 shall be admitted to the Partnership as a General Partner (in the place, in whole or in part, of the transferor or former General Partner), effective as of the date that an amendment of the Certificate of Limited Partnership, adding the name of such successor General Partner and other required information, is filed pursuant to Section 2.01 (which date, in the event the successor General Partner is in the place in whole of the transferor or former General Partner, shall be contemporaneous with the withdrawal of such transferor or former General Partner), and upon receipt by the transferor or former General Partner, of all of the following:

(a) the successor General Partner's acceptance of, and agreement to be bound by, all of the terms and provisions of this Agreement, in form and substance satisfactory to the transferor or former General Partner;

(b) evidence of the authority of such successor General Partner to become a General Partner and to be bound by all of the terms and conditions of this Agreement;

(c) the written agreement of the successor General Partner to continue the business of the Partnership in accordance with the terms and provisions of this Agreement; and

(d) such other documents or instruments as may be required in order to effect the admission of the successor General Partner as the General Partner under this Agreement and applicable law.

11.04. Admission of Additional Limited Partners. A Person who makes a Capital Contribution to the Partnership pursuant to Section 4.05 in return for the issuance of Units or other securities of the Partnership shall be admitted to the Partnership as an Additional Limited Partner upon furnishing to the General Partner (a) acceptance, in form satisfactory to the General Partner, of all the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Article XV, and (b) such other documents or instruments as may be required in order to effect his admission as a limited partner, and such admission shall become effective on the date that the General Partner determines, in its sole discretion, that such conditions have been satisfied and when any such admission is shown on the books and records of the Partnership.

ARTICLE XII

Withdrawal or Removal of General Partner

12.01. Withdrawal of General Partner.

(a) The General Partner shall not withdraw as the general partner

in the Partnership and transfer its Partnership Interest to any Person other than its Affiliate until after the tenth anniversary of the Closing Date. Thereafter, the General Partner shall not withdraw as the General Partner in the Partnership for the remainder of the term of the Partnership unless (i) the General Partner's shall have transferred all of its Partnership Interest as a General Partner in accordance with Section 10.02 or (ii) such withdrawal shall have been approved by a Majority Interest.

(b) After the tenth anniversary of the Closing Date and upon the occurrence of any one of the conditions set forth in Section 12.01(a) above, the General Partner may withdraw from the Partnership effective on at least thirty (30) days' advance written notice to the Record Holders, such withdrawal to take effect on the date specified in such notice. The General Partner shall have no liability to the Partnership or the Record Holders on account of any withdrawal in accordance with the terms of this Section 12.01. If the General Partner shall give a notice of withdrawal pursuant to this Section 12.01, then a Majority Interest may elect a successor General Partner, who shall be admitted as a successor General Partner pursuant to Article XI. If no successor General Partner shall be elected in accordance with this Section 12.01 and there shall be no remaining General Partner, then the Partnership shall be dissolved pursuant to Article XIII.

12.02. Removal of General Partner.

(a) The General Partner may be removed as General Partner, with or without cause, only upon the written consent or affirmative vote of Record Holders owning at least seventy-five percent (75%) of the total number of Units then outstanding held by all Record Holders. Any such action by the Record Holders also must provide for the election of a successor General Partner and shall become effective only upon admission of the successor General Partner pursuant to Article XI.

(b) Written notice of the removal of the General Partner pursuant to this Section 12.02 shall be served upon such General Partner in the manner set forth in Section 16.02. Such notice shall set forth the day upon which such removal is to become effective, which date shall not be less than thirty (30) days after the service of the notice upon the General Partner.

(c) A General Partner removed as a General Partner pursuant to this Section 12.02 shall not have any right to participate in the management or control of the business of the Partnership from and after the effective date of such removal.

(d) A General Partner removed as a General Partner in the Partnership pursuant to this Section 12.02 shall also be removed as a general partner in the Operating Partnership pursuant to Section 10.02 of the OLP Partnership Agreement.

12.03. Amendment of Agreement and Certificate of Limited Partnership. This Agreement and the Certificate of Limited Partnership shall be amended to reflect the withdrawal, removal or succession of a General Partner.

12.04. Interests of Departing General Partner and Successor.

(a) Upon the withdrawal or removal of a General Partner, such departing General Partner shall, at its option exercisable prior to the effective date of its departure, promptly receive from its successor (if any) in exchange for its Partnership Interest as a General Partner, an amount in cash equal to the fair market value of such departing General Partner's Partnership Interest as a General Partner in both the Partnership and the Operating Partnership, as determined as of the effective date of its departure. If the departing General Partner exercises its option to have its Partnership Interest as a General Partner acquired by its successor, such successor must also acquire at such time the interests of the departing General Partner as a general partner in the Operating Partnership, for an amount in cash equal to the fair market value of such interest, as determined as of the effective date of its departure. If the option is exercised, the departing General Partner shall, as of the effective date of its departure, cease to share in allocations and distributions with respect to its Partnership Interest as a General Partner.

(b) Upon the withdrawal or removal of the General Partner pursuant

to Section 12.01 or 12.02, respectively, if the business of the Partnership is continued pursuant to Section 13.03 hereof, and if a departing General Partner shall not exercise the option described in Section 12.04(a), such departing General Partner shall become a Record Holder and its interests as a General Partner in both the Partnership and the Operating Partnership shall be converted into the number of Units determined by dividing (i) the fair market value of such departing General Partner's Partnership Interest as a General Partner in both the Partnership and the Operating Partnership, determined as set forth in Section 12.04(c) as of the effective date of its departure, by (ii) the

average closing Unit Price for the twenty (20) trading days immediately preceding the effective date of the departure of such departing General Partner.

(c) For purposes of this Section 12.04, the "fair market value" of such General Partner's Partnership Interest as a General Partner in both the Partnership and the Operating Partnership shall be the amount that would be distributed to such General Partner pursuant to Section 5.03 of both this Agreement and the OLP Partnership Agreement if the Partnership Assets and the assets of the Operating Partnership were sold for cash in an orderly liquidation of the Partnership Assets commencing on the effective date of such General Partner's departure, with such liquidation being effected through arm's-length sales between informed and willing purchasers under no compulsion to buy and informed and willing sellers under no compulsion to sell, with the proceeds from such hypothetical sales to be discounted (at a rate equal to the interest rate on U.S. Treasury obligations with a term of one (1) year issued on the date nearest the effective date of such General Partner's departure) to the effective date of such General Partner's departure to reflect the time period reasonably anticipated to be necessary to consummate such sales, as such "fair market value" is agreed upon by such General Partner and its successor within thirty (30) days after the effective date of such General Partner's departure or, in the absence of such an agreement, as determined by an independent investment banking firm or other independent expert selected by such General Partner and its successor, which, in turn, may rely on other experts and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such departure, then such firm shall be designated by the independent investment banking firm or other independent expert selected by each of such General Partner and its successor. In making its determination, such independent investment banking firm or other independent expert shall consider the Unit Price, the value of the Partnership Assets and the assets of the Operating Partnership, the rights and obligations of such General Partner and other factors it may deem relevant.

(d) At any time after the departure of a departing General Partner, upon the request of such departing General Partner, the Partnership shall file with the Commission as promptly as practicable after receiving such request, and use its best efforts to cause to become effective, a registration statement under the Securities Act registering the offering and sale of all or a portion of the Units owned by the departing General Partner at the time of its departure, including any Units that were received by the departing General Partner pursuant to this Section 12.04 and pursuant to Section 10.04 of the OLP Partnership Agreement and

included in such request, provided that the Partnership shall be required to file no more than three such registration statements at the request of any one departing General Partner. In connection with any such registration, the Partnership shall promptly prepare and file such documents as may be necessary to register or qualify the Units subject to such registration under the securities laws of such states as the departing General Partner may reasonably request and do any and all other acts and things which may be necessary or advisable to enable the departing General Partner to consummate a public sale of such Units in such states. The first of the three registrations permitted to be effected under this Section 12.04(d) shall be effected at the expense of the Partnership, except for underwriting discounts and commissions, and the second and third such registrations, if any, shall be effected at the expense of the departing General Partner. Any registration statement filed pursuant hereto shall be continued in effect for a period of not more than six months following

its effective date. If offered in a firm commitment underwriting, the Partnership may provide indemnification to the underwriters in form and substance reasonably satisfactory to such underwriters and the General Partner.

(e) If a departing General Partner shall not exercise the option provided for in Section 12.04(a), the successor General Partner shall, at the effective date of its admission to the Partnership as a General Partner, contribute to the capital of the Partnership cash in an amount equal to 1/99th of the product of (i) the number of Units outstanding immediately prior to the effective date of such successor General Partner's admission (but after giving effect to the conversion described in Section 12.04(b)) and (ii) the average closing Unit Price for the twenty (20) trading days immediately preceding the effective date of such successor General Partner's admission. Thereafter, such successor General Partner shall, notwithstanding any other provision of this Agreement, be entitled to one percent (1%) of all Partnership allocations and distributions.

(f) If, at the time of the General Partner's departure, the Partnership is indebted to the General Partner under this Agreement or any other instrument or agreement for funds advanced, properties sold, services rendered or costs and expenses incurred by the General Partner, the Partnership shall, in the case of the General Partner's withdrawal pursuant to Section 12.01, deliver to the General Partner a three-year fully-amortizing promissory note in the original principal amount of the full amount of such indebtedness and bearing interest at an annual rate equal to the Prime Rate announced by Citibank, N.A. from time to time plus one (1) percent, and in the case of the General Partner's removal pursuant to Section 12.02, pay to the General Partner in cash or by check, within sixty (60) days after the effective date of the

General Partner's removal, the full amount of such indebtedness. The successor to the General Partner shall assume all obligations theretofore incurred by the General Partner, as genera: partner of :he Partnership, and the Partnership and such successor shall take all such actions as shall be necessary to terminate any guarantees of the General Partner, and any of its Affiliates, of any obligations of the Partnership. If, for whatever reason, the creditors of the Partnership shall not consent to such termination of any such guarantees, the successor to the General Partner and the Partnership shall be required to indemnify the General Partner for any liabilities and expenses incurred by the departing General Partner on account of such guarantees.

ARTICLE XIII

Dissolution and Liquidation

13.01. No Dissolution. The Partnership shall not be dissolved by the admission of Additional Limited Partners or Substituted Limited Partners or by the admission of additional General Partners or successor General Partners in accordance with the terms of this Agreement.

13.02. Events Causing Dissolution. The Partnership shall be dissolved and its affairs wound up upon the occurrence of the earliest to occur of any of the following events:

(a) the expiration of the term of the Partnership, as provided in Section 2.05;

(b) the withdrawal, bankruptcy or dissolution of the General Partner or the occurrence of any other event that results in the General Partner ceasing to be the General Partner (other than by reason of a transfer pursuant to Section 10.02 or withdrawal occurring upon or after, or a removal effective upon or after, selection of a successor pursuant to Sections 12.01 or 12.02, as the case may be);

(c) an election by a Majority Interest, with the approval of the General Partner, to terminate, liquidate and dissolve the Partnership;

(d) the sale or other disposition of all or substantially all of the Partnership Assets, upon the election of the General Partner and the vote of a Majority Interest;

(e) the Partnership's insolvency or bankruptcy; or

(f) the occurrence of any other event that, under the Delaware Act, would cause the dissolution of the Partnership

or that would make it unlawful for the business of the Partnership to be continued.

For purposes of this Section 13.02, bankruptcy of the Partnership or the General Partner shall be deemed to have occurred when (i) such Person commences a voluntary proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) a final and nonappealable order for relief is entered against it under the Federal bankruptcy laws as now or hereafter in effect or (iii) it executes and delivers a general assignment for the benefit of its creditors.

13.03. Right to Continue Business of Partnership. Upon an event described in Section 13.02(b), the Partnership thereafter shall be dissolved and liquidated unless, within ninety (.90) days after the event described in such Section, an election to reconstitute and continue the business of the Partnership shall be made writing by a Majority Interest and a successor General Partner is selected by a Majority Interest. If such an election to continue the Partnership is made and a successor General Partner selected, then:

(i) the Partnership shall continue until the Termination Date unless earlier dissolved in accordance with this Article XIII;

(ii) the Partnership Interest of the former General Partner shall be treated thenceforth as the interest of a Record Holder and either (A) purchased by the successor General Partner or (B) converted into Units in the manners provided in Section 12.04 as if the former General Partner were a departing General Partner under Section 12.04; and

(iii) all necessary steps shall be taken to amend this Agreement and the Certificate of Limited Partnership to reflect the reconstitution and continuation of the business of the Partnership.

13.04. Dissolution. Except as otherwise provided in Section 13.03, upon the dissolution of the Partnership, the Certificate of Limited Partnership shall be cancelled in accordance with the provisions of the Delaware Act, and the General Partner (or, if the dissolution is caused by the withdrawal, bankruptcy, dissolution or removal of the General Partner, then the Person designated as Liquidating Trustee in Section 13.05 hereof) promptly shall notify the Record Holders of such dissolution.

13.05. Liquidation. Upon dissolution of the Partnership, unless an election to continue the business of the Partnership is

made pursuant to Section 13.03, the General Partner, or, in the event the dissolution is caused by an event described in Section 13.02(b), a Person or Persons selected by a Majority Interest, shall be the Liquidating Trustee. The Liquidating Trustee shall proceed without any unnecessary delay to sell or otherwise liquidate the Partnership Assets and shall apply and distribute the proceeds of such sale or liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) to pay (or to make provision for the payment of) all creditors of the Partnership, other than Partners, in the order of priority provided by law;

(b) to pay, on a pro rata basis, all creditors of the Partnership that are Partners; and

(c) after the payment (or the provision for payment) of all debts, liabilities, and obligations of the Partnership, to the General Partner and the Record Holders in accordance with Section 5.03.

The Liquidating Trustee, if other than the General Partner, shall be

entitled to receive such compensation for its services as Liquidating Trustee as may be approved by a Majority Interest. The Liquidating Trustee shall agree not to resign at any time without sixty (60) days prior written notice and, if other than the General Partner, may be removed at any time, with or without cause, by written notice of removal approved by a Majority Interest. Upon dissolution, removal or resignation of the Liquidating Trustee, a successor and substitute Liquidating Trustee (who shall have and succeed to all rights, powers and duties of the original Liquidating Trustee) shall be selected within ninety (90) days thereafter by a Majority Interest. The right to appoint a successor or substitute Liquidating Trustee in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidating Trustee are authorized to continue under the provisions hereof, and every reference herein to the Liquidating Trustee will be deemed to refer also to any such successor or substitute Liquidating Trustee appointed in the manner herein provided. Except as expressly provided in this Article XIII, the Liquidating Trustee appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidating Trustee to carry out the duties and functions of the Liquidating Trustee hereunder (including the establishment of

reserves for liabilities that are contingent or uncertain in amount) for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidating Trustee to complete the winding up and liquidation of the Partnership as provided for herein. In the event that no Person is selected to be the Liquidating Trustee as herein provided within one hundred twenty (120) days following the event of dissolution, or in the event the Record Holders fail to select a successor or substitute Liquidating Trustee within the time periods set forth above, any Partner may make application to a Court of Chancery of the State of Delaware to wind up the affairs of the Partnership and, if deemed appropriate, to appoint a Liquidating Trustee.

13.06. Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 13.05 in order to minimize any losses otherwise attendant upon such a winding up.

13.07. Termination of Partnership. Except as otherwise provided in this Agreement, the Partnership shall terminate when all of the assets of the Partnership shall have been converted into cash, the net proceeds therefrom, as well as any other liquid assets of the Partnership, after payment of or due provision for all debts, liabilities and obligations of the Partnership, shall have been distributed to the Partners as provided for in Section 5.03 and 13.05, and the Certificate of Limited Partnership shall have been cancelled in the manner required by the Delaware Act.

ARTICLE XIV

Amendments; Meetings; Voting; Record Date

14.01. Amendments to be Adopted Solely by General Partner. The General Partner (pursuant to the General Partner's powers of attorney from the Record Holders described in Article XV), without the consent or approval at the time of any Record Holder (each Record Holder, by acquiring a Unit, Depositary Unit or other security of the Partnership and requesting admission to the Partnership, being deemed to consent to any such amendment), may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record all documents required or desirable in connection therewith, to reflect:

(a) a change in the name of the Partnership or the location of the principal place of business of the Partnership;

(b) the admission, substitution, or withdrawal of Partners in accordance with this Agreement;

(c) an election to be bound by any successor statute to the Delaware Act governing limited partnerships pursuant to the power granted in Section 6.06;

(d) a change that is necessary to qualify the Partnership as a limited partnership or a partnership in which the Record Holders have limited liability under the laws of any state or that is necessary or advisable in the opinion of the General Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for federal income tax purposes;

(e) a change that is necessary to reorganize the Partnership so as to qualify as a "real estate investment trust" within the meaning of Section 856 of the Code;

(f) a change that is (i) of an inconsequential nature and does not adversely affect the Record Holders in any material respect; (ii) necessary or desirable to cure any ambiguity, to correct or supplement any provision herein that would be inconsistent with law or any other provision herein or to make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with law or any provisions of this Agreement; (iii) necessary or desirable to satisfy any federal or state agency or contained in any federal or state statute; (iv) necessary or desirable to facilitate the trading of the Depositary Units or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the Depositary units are or will be listed for trading, compliance with any of which the General Partner deems to be in the interests of the Partnership, the Limited Partners, Record Holders, Non-Consenting Investors or Subsequent Transferees; (v) necessary or desirable in connection with any action permitted to be taken by the General Partner under Section 8.13 hereof; or (vi) required or contemplated by this Agreement;

(g) a change in any provision of this Agreement which requires any action to be taken by or on behalf of the General Partner or the Partnership pursuant to the requirements of applicable Delaware law if the provisions of applicable Delaware law are amended, modified or revoked so that the taking of such action is no longer required; or

(h) any other amendments similar to the foregoing.

The authority set forth in Section 14.01(f) shall specifically include the authority to make such amendments to this Agreement and to the Certificate of Limited Partnership as the General

Partner deems necessary or desirable in the event the Delaware Act amended to eliminate or change any provision now in effect.

14.02. Amendment Procedures. Except as specifically provided in Sections 14.01 and 14.03, all amendments to this Agreement shall be made solely in accordance with the following procedures:

(a) Any amendments of this Agreement must be proposed either:

(i) by the General Partner, by submitting the text of the proposed amendment to all Record Holders in writing; or

(ii) by Record Holders owning at least ten percent (10%) of the total number of Units and Depositary Units then owned by all Record Holders, by submitting their proposed amendment in writing to the General Partner. The General Partner shall, within thirty (30) days after the receipt of any such proposed amendment, or as soon thereafter as is practicable, submit the text of the proposed amendment to all Record Holders. The General Partner may include in such submission its recommendation as to the proposed amendment.

(b) If an amendment is proposed pursuant to this Section 14.02,

the General Partner shall seek the written consent of the Record Holders to such amendment or shall call a meeting of the Record Holders to consider and vote on the proposed amendment, unless, in the opinion of counsel for the Partnership, such proposed amendment would be illegal under Delaware law if adopted, in which case the General Partner shall not be required to take any further action with respect thereto. A proposed amendment shall be effective only if approved by the General Partner in writing and by a Majority Interest, unless a greater percentage vote of the Record Holders is required by law or this Agreement. The General Partner shall keep all Record Holders advised of the status of any proposed amendment and shall notify all Record Holders upon final adoption or rejection of any proposed amendment.

14.03. Amendment Restrictions. Notwithstanding the provisions of Sections 14.01 and 14.02, (a) no amendment to this Agreement shall be permitted without a unanimous vote of the Record Holders if such amendment, in the opinion of counsel for the Partnership, (i) would cause the loss of limited liability of the Record Holders under this Agreement or of the Partnership as the sole limited partner of the Operating Partnership, or (ii) would cause the Partnership or the Operating Partnership to be

treated as an association taxable as a corporation for federal income tax purposes and (b) no amendment to this Agreement shall be permitted which would (i) enlarge the obligations of the General Partner or any Record Holder or convert the interest of any Record Holder into the interest of a general partner; (ii) modify the expense reimbursement payable to the General Partner pursuant to Article VII of this Agreement without the consent of the General Partner; (iii) modify the order and method for allocations of income and loss or distributions pursuant to Article V of this Agreement without the consent of the General Partner or the Record Holders adversely affected; or (iv) amend Sections 14.01, 14.02 or 14.03 of this Agreement without the consent of the General Partner and Record Holders who are Record Holders with respect to at least ninety-five percent (95%) of the total number of all outstanding Units held by all Record Holders.

14.04. Meetings. Meetings of the Record Holders may be called by the General Partner or by Record Holders owning at least ten percent (10%) of the total number of Units and Depositary Units then owned by all Record Holders. Any Record Holder calling a meeting shall specify the number of Units and Depositary Units as to which such Record Holder is exercising the right to call a meeting and only those specified Units and Depositary Units shall be counted for the purpose of determining whether the required ten percent (10%) standard of the preceding sentence has been met. Record Holders desiring to call a meeting shall deliver to the General Partner one or more calls in writing stating that the Record Holders signing such writing wish to call a meeting and indicating the specific purposes for which the meeting is to be called. Action at the meeting shall be limited to those specific matters specified in the call of the meeting. Within sixty (60) days after receipt of such a call from Record Holders, or within such greater time as may be reasonably necessary for the Partnership to comply with any statutes, rules, regulations, listing agreements or similar requirements governing the holding of a meeting or the solicitation of proxies for use at such a meeting, the General Partner shall send a notice of the meeting to the Record Holders either directly or indirectly though the Depositary. A meeting shall be held at a reasonable time and convenient place determined by the General Partner or the Liquidating Trustee, as the case may be, on a date not more than sixty (60) days after the mailing of notice of the meeting. Record Holders may vote either in person or by proxy at any meeting. Each Record Holder shall have one vote for each Unit or Depositary Unit as to which he has been admitted to the Partnership as a Record Holder. No action shall be taken by the Record Holders without a meeting duly called and held or without written consent in accordance with Section 14.13.

14.05. Notice of Meeting. Notice of a meeting called pursuant to Section 14.04 shall be given either personally in writing or by mail or other means of written communication addressed to each Record Holder at the address of the Record Holder appearing on the books of the Depositary or the Partnership.

An affidavit or certificate of mailing of any notice or report in accordance with the provisions of this Article XIV executed by the General Partner, the Depositary, transfer agent, registrar of Depositary Units or mailing organization shall constitute conclusive (but not exclusive) evidence of the giving of notice. If any notice addressed to a Record Holder at the address of such Record Holder appearing on the books of the Partnership or Depositary is returned to the Partnership by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver such notice, the notice and any subsequent notices or reports shall be deemed to have been duly given without further mailing if they are available for the Record Holder at the principal office of the Partnership for a period of one year from the date of the giving of the notice to all other Record Holders.

14.06. Record Date. For purposes of determining the Record Holders entitled to notice of or to vote at a meeting of the Record Holders or to give consents without a meeting as provided in Section 14.13, the General Partner or the Liquidating Trustee, as the case may be, may set a Record Date, which Record Date shall not be less than ten (10) days nor more than sixty (60) days prior to the date of such meeting or consent (unless such requirement conflicts with any rule, regulation, guideline, or requirement of any securities exchange on which the Depositary Units are listed for trading, in which case the rule, regulation, guidelines, or requirement of such securities exchange shall govern).

14.07. Adjournment. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting and a new Record Date need not be fixed if the time and place of such adjourned meeting are announced at the meeting at which such adjournment is taken, unless such adjournment shall be for more than thirty (30) days. At the adjourned meeting, the Partnership may transact any business that would have been permitted to be transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if a new Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with this Article XIV.

14.08. Waiver of Notice; Consent to Meeting; Approval of Minutes. The transactions of any meeting of Record Holders, however called and noticed, and wherever held, are as valid as though they had been approved at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the Record

Holders entitled to vote, not present in person or by proxy, signs written waiver of notice, or a consent to the holding of the meeting, or an approval of the minutes thereof. All such waivers, consents, and approvals shall be filed with the Partnership records or made a part of the minutes of such meeting. Attendance of a Record Holder at a meeting shall constitute a waiver of notice of the meeting, provided, however, that no such waiver shall occur when such a Record Holder objects, at the beginning of the meeting, to the transaction of any business at such meeting because the meeting is not lawfully called or convened; and provided further, that attendance at a meeting is not a waiver of any right to object to the consideration of any matters required to be included in the notice of the meeting, but not so included, if the objection is expressly made at the meeting.

14.09. Quorum. Record Holders who are Record Holders with respect to more than fifty percent (50%) of the total number of all outstanding Units and Depositary Units then held by all Record Holders, whether represented in person or by proxy, shall constitute a quorum at a meeting of Record Holders. The Record Holders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment of such meeting, notwithstanding the withdrawal of enough Record Holders to leave less than a quorum, if any action taken (other than adjournment) is approved by the requisite number of Record Holders specified in this Agreement. In the absence of a quorum, any meeting of Record Holders may be adjourned from time to time by the affirmative vote of a majority of the Units and Depositary Units represented either in person or by proxy at such meeting, but no such business may be transacted, except as provided in Section 14.04.

14.10. Conduct of Meeting. The General Partner or the Liquidating Trustee, as the case may be, shall be solely responsible for convening, conducting, and adjourning any meeting of Record Holders, including, without limitation, the determination of Persons entitled to vote at such meeting, the existence of a quorum for such meeting, the satisfaction of the requirements of

Section 14.04 with respect to such meeting, the conduct of voting at such meeting, the validity and effect of any proxies represented at such meeting, and the determination of any controversies, votes, or challenges arising in connection with or during such meeting or voting. The General Partner or the Liquidating Trustee, as the case may be, shall designate a Person to serve as chairman of any meeting and further shall designate a Person to take the minutes of any meeting, which Person, in either case, may be, without limitation, a Partner or any employee or agent of the General Partner. The General Partner or the Liquidating Trustee, as the case may be, may make all such other regulations, consistent with applicable law and this Agreement, as it may deem

advisable concerning the conduct of any meeting of the Record Holders, including regulations in regard to the appointment of proxies, the appointment and duties of inspectors of votes, and the submission and examination of proxies and other evidence of the right to vote.

14.11. Voting Rights. (a) Subject to Section 14.12, the Record Holders shall have the right to vote on all matters specified below and the actions specified therein may be taken by the General Partner only with the affirmative vote or written consent pursuant to Section 14.13 of a Majority Interest (except for (i) removal of the General Partner pursuant to Section 12.02, which requires consent of at least 75% of the Record Holders, and (ii) certain amendments to this Agreement pursuant to Section 14.03, which require either unanimous or the consent of at least 95% of the Record Holders) and with the separate concurrence of the General Partner:

(i) amendment of this Agreement, including an amendment extending the term of the Partnership, except as permitted pursuant to Section 14.12;

(ii) dissolution of the Partnership pursuant to Section 13.02(c) or (d);

(iii) selection of a Liquidating Trustee pursuant to Section 13.05;

(iv) approval or disapproval of any merger, consolidation or combination of the business operations of the Partnership with those of any other Person; provided, however, that no vote or approval shall be required with respect to any such transaction which, in the sole and absolute discretion of the General Partner, (A) is primarily for the purpose of acquiring properties or assets, (B) combines the ongoing business operations of the entities with the Partnership as the surviving entity, or (C) is between the Partnership and the Operating Partnership;

(v) approval or disapproval of a sale or other disposition, except upon dissolution and liquidation pursuant to Article XIII, of all or substantially all of the Partnership Assets in a single sale or in a related series of multiple sales; provided, however, that this provision shall not be interpreted to preclude or limit the mortgage, pledge, hypothecation or grant of a security interest in all or substantially all of the Partnership Assets, and shall not apply to any forced sale of any or all of the Partnership Assets pursuant to the foreclosure of, or other realization upon, any such encumbrance; which require either unanimous or 95% consent of the Record Holders pursuant to Section 14.03.

(vi) approval or disapproval of the transfer of the General Partner's Partnership Interest as a General Partner where permitted pursuant to Section 10.02;

(vii) approval or disapproval of the withdrawal of the General Partner as the general partner in the Partnership pursuant to Section 12.01;

(viii) election of a successor General Partner pursuant to Section 12.01;

(ix) removal of the General Partner pursuant to Section 12.02;

(x) when the Partnership would otherwise dissolve and its business would not otherwise be continued pursuant to Article XIII, election to reconstitute and continue the business of the Partnership pursuant to Section 13.03; and

(b) The Record Holders shall have the right to vote on any proposal submitted for the approval of the limited partners of the Operating Partnership, and the General Partner shall not cause the Partnership, in its capacity as sole limited partner of the Operating Partnership, to consent to any such proposal unless the Record Holders vote to approve such proposal in at least the same percentage as is required by the OLP Partnership Agreement for the approval of such proposal by the limited partners of the Operating Partnership.

(c) Except as expressly provided in this Agreement, Record Holders shall have no voting rights.

14.12. Voting Rights Conditional. The voting rights set forth in Section 14.11 shall not be exercised unless the Partnership shall have received an opinion of counsel for the Partnership to the effect that the exercise of such right and the action proposed to be taken with respect to any particular matter (a) shall not cause the Record Holders to be deemed to be taking part in the management and control of the business and affairs of the Partnership so as to subject the Record Holders or the Partnership as the sole limited partner of the Operating Partnership to unlimited liability, (b) will not jeopardize the status of the Partnership as a partnership under applicable tax laws and regulations, and (c) is otherwise permissible under the state statutes then governing the rights, duties and liabilities of the Partnership and the Record Holders. If counsel for the Partnership has indicated that it is unable or unwilling to deliver such an opinion, the General Partner may take any action described in Section 14.11(a) without the need for a vote of the Record Holders, except for effecting amendments to the Partnership Agreement

which require either unanimous or 95% consent of the Record Holders pursuant to Section 14.03.

14.13. Action Without a Meeting. Any action that may be taken at a meeting of the Record Holders may be taken without a meeting if a consent in writing setting forth the action so taken is signed by Record Holders owning not less than the number of Depositary Units or Units that would be necessary to authorize or take such action at a meeting at which all of the Record Holders were present and voted. Prompt notice of the taking of action without a meeting shall be given to the Record Holders who have not consented thereto in writing. The General Partner may specify that any written ballot submitted to Record Holders for the purpose of taking any action without a meeting shall be returned to the Partnership within the time, not less than twenty (20) days, specified by the General Partner. If a ballot returned to the Partnership does not vote all of the Units held by a Record Holder, the Partnership shall be deemed to have failed to receive a ballot for the Units that were not voted. If consent to the taking of any action by the Record Holders is solicited by any person other than by or on behalf of the General Partner, the written consents shall have no force and effect unless and until (i) they are deposited with the Partnership in care of the General Partner, and (ii) consents sufficient to take the action proposed are dated as of a date not more than ninety (90) days prior to the date sufficient consents are deposited with the Partnership.

ARTICLE XV

Power of Attorney

Each Record Holder (including each Non-Consenting Investor who executes and delivers a Transfer Application to the Depositary and each Subsequent Transferee who accepts Depositary Units and executes and delivers a Transfer Application to the Depositary) is deemed to irrevocably constitute, appoint and empower the General Partner (and any successor by merger, transfer, election or otherwise), and each of the General Partner's authorized officers and attorneys-in-fact, with full power of substitution, as the true and lawful agent and attorney-in-fact of such Record Holder, with full power and authority in

such Record Holder's name, place and stead and for such Record Holder's use or benefit:

(a) to make, execute, verify, consent to, swear to, acknowledge, make oath as to, publish, deliver, file and/or record in the appropriate public offices, (i) all certificates and other instruments, including, at the option of the General Partner, this Agreement and the Certificate of Limited Partnership and all amendments and restatements thereof, that the General Partner deems appropriate or necessary to

qualify, or continue the qualification of, the Partnership as a limited partnership (or a partnership in which the Record Holders have limited liability) in the State of Delaware and all jurisdictions in which the Partnership may or may intend to conduct business or own property; (ii) all other certificates, instruments and documents as may be requested by, or may be appropriate under the laws of any state or other jurisdiction in which the Partnership may or may intend to conduct business or own property; (iii) all instruments that the General Partner deems appropriate or necessary to reflect any amendment, change or modification of this Agreement in accordance with the terms hereof; (iv) all conveyances and other instruments or documents that the General Partner deems appropriate or necessary to effectuate or reflect the dissolution, termination and liquidation of the Partnership pursuant to the terms of this Agreement; (v) any and all financing statements, continuation statements, mortgages or other documents necessary to grant to or perfect for secured creditors of the Partnership, including the General Partner and Affiliates, a security interest, mortgage, pledge or lien on all or any of the Partnership Assets; (vi) all instruments or papers required to continue the business of the Partnership pursuant to Article XIII; (vii) all instruments (including this Agreement and the Certificate of Limited Partnership and amendments and restatements thereof) relating to the admission of any Partner pursuant to Article XI; and (viii) all other instruments as the attorneys-in-fact or any one of them may deem necessary or advisable to carry out fully the provisions of this Agreement in accordance with its terms; and

(b) to enter into the Depositary Agreement and deposit all Units of the Record Holders in the Deposit Account established by the Depositary pursuant to the Depositary Agreement. The execution and delivery by any of said attorneys-in-fact of any such agreements, amendments, consents, certificates or other instruments shall be conclusive evidence that such execution and delivery was authorized hereby.

Nothing herein contained shall be construed as authorizing any Person acting as attorney-in-fact pursuant to this Article XV to take action as an attorney-in-fact for any Record Holder to increase in any way the liability of such Record Holder beyond the liability expressly set forth in this Agreement, or to amend this Agreement except in accordance with Article XIV.

The appointment by each Record Holder of the Persons designated in this Article XV as attorneys-in-fact shall be deemed to be a power of attorney coupled with an interest in recognition of the fact that each of the Record Holders under this Agreement will

be relying upon the power of such Persons to act pursuant to this power of attorney for the orderly administration of the affairs of the Partnership. The foregoing power of attorney is hereby declared to be irrevocable, and it shall survive, and shall not be affected by, the subsequent death, incompetency, dissolution, disability, incapacity, bankruptcy or termination of any Record Holder and it shall extend to such Record Holder's heirs, successors and assigns. Each Record Holder hereby agrees to be bound by any representations made by any Person acting as attorney-in-fact pursuant to this power of attorney in accordance with this Agreement. Each Record Holder hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of any

Person taken as attorney-in-fact under this power of attorney in accordance with this Agreement. Each Record Holder shall execute and deliver to the General Partner, within fifteen (15) days after receipt of the General Partner's request therefor, all such further designations, powers of attorney and other instruments as the General Partner deems necessary to effectuate this Agreement and the purposes of the Partnership.

ARTICLE XVI

Miscellaneous Provisions

16.01. Additional Actions and Documents. Each of the Record Holders hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver, and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use his best efforts to obtain such consents, as may be necessary or as may be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether before, at, or after the closing of the transactions contemplated by this Agreement.

16.02. Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by a Record Holder or the Partnership pursuant to this Agreement shall be in writing and shall be personally delivered, mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by telegram or telex, addressed as follows:

(a) If to the General Partner:

American Property Investors, Inc.
666 Third Avenue
New York, New York 10017
Attention: Richard H. Ader

(b) If to a Record Holder:

The Last Known Business, Residence or
Mailing Address of Such Record Holder
Reflected in the Records of the
Partnership or the Depositary

(c) If to the Partnership:

American Real Estate Partners, L.P.
666 Third Avenue
New York, New York 10017

The General Partner and each Record Holder and the Partnership may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be delivered, mailed or transmitted in the manner described above shall be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee (with an affidavit of personal delivery, the return receipt, the delivery receipt, or (with respect to a telex) the answerback being deemed conclusive (but not exclusive) evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

16.03. Severability. The invalidity of any one or more provisions hereof or of any other agreement or instrument given pursuant to or in connection with this Agreement shall not affect the remaining portions of this Agreement or any such other agreement or instrument or any part thereof, all of which are inserted conditionally on their being held valid in law; and in the event that one or more of the provisions contained herein or therein should be invalid, or should operate to render this Agreement or any such other agreement or instrument invalid, this Agreement and such other agreements and instruments shall be construed as if such invalid provisions had not been inserted.

16.04. Survival. It is the express intention and agreement of the Partners that all covenants, agreements, statements, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery

of this Agreement.

16.05. Waivers. Neither the waiver by a Partner of a breach or of a default under any of the provisions of this Agreement, nor the failure of a Partner, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right, remedy, or privilege hereunder shall be construed as a waiver of any subsequent breach or default of a similar nature, or

a waiver of any such provisions, rights, remedies, or privileges hereunder.

16.06. Exercise of Rights. No failure of delay on the part of a Partner or the Partnership in exercising any right, power, or privilege hereunder and no course of dealing between the Partners or between the Partners and the Partnership shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which a Partner, or the Partnership would otherwise have at law or in equity or otherwise.

16.07. Binding Effect. Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the Partners and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

16.08 Limitation on Benefits of this Agreement. It is the explicit intention of the Partners that no person or entity other than the Partners and the Partnership is or shall be entitled to bring any action to enforce any provision of this Agreement against any Partners or the Partnership, and that except as set forth in this Agreement, the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Partners (or their respective successors and assigns as permitted hereunder) and the Partnership.

16.09. Force Majeure. If the General Partner is rendered unable, wholly or in part, by "force majeure" (as herein defined) to carry out any of its obligations under this Agreement, other than the obligation hereunder to make money payments, the obligations of the General Partner, insofar as they are affected by such force majeure, shall be suspended during but no longer than the continuance of such force majeure. The term "force majeure" as used herein shall mean an act of God, strike, lockout or other industrial disturbance, act of public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, governmental restraint, unavailability of equipment and any other cause, whether of the kind specifically enumerated above or otherwise, which is not reasonably within the control of the General Partner.

16.10. Consent of Record Holders. By acceptance of a Unit or Depositary Unit, each Record Holder expressly consents and agrees that, whenever in this Agreement it is specified that an action may be taken upon the affirmative vote of less than all of

the Record Holders, such action may be so taken upon the concurrence of less than all of the Record Holders and each such Record Holders shall be bound by the results of such action.

16.11. Entire Agreement. This Agreement contains the entire agreement among the Partners with respect to the transactions contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein and therein.

16.12. Pronouns. All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require.

16.13. Headings. Article, section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be

deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

16.14. Governing Law. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the Delaware Act and all other laws of Delaware (but not including the choice of law rules thereof).

16.15. Execution in Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of or on behalf of, each party, or that the signatures of the person required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing

the respective signatures of, or on behalf of, all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the day and year first hereinabove set forth.

GENERAL PARTNER:

AMERICAN PROPERTY INVESTORS, INC.

By: _____

Title: _____

ORGANIZATIONAL LIMITED PARTNER:

JULIA DESANTIS

EXHIBIT A
TO AMENDED AND RESTATED
AGREEMENT OF LIMITED
PARTNERSHIP OF AMERICAN
REAL ESTATE PARTNERS, L.P.

CERTIFICATE
FOR
LIMITED PARTNER UNITS
OF
AMERICAN REAL ESTATE PARTNERS, L.P.

No. Units

American Property Investors, Inc., as the General Partner of American Real Estate Partners, L.P. (the "Partnership"), a Delaware limited partnership, hereby certifies that _____ units of limited partner interest in the Partnership ("Units") have been issued to _____. The rights, preferences and limitations of the Units are set forth in the Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") under which the Partnership was formed and is existing, and in the Certificate of Limited Partnership filed for record in the Office of the Secretary of State of Delaware, copies of which are on file at the General Partner's principal office at 666 Third Avenue, New York, New York 10017. Neither this Certificate nor the Units evidenced hereby is transferable, except upon death, by operation of law or as otherwise provided in the Partnership Agreement.

American Property Investors, Inc.
General Partner of
American Real Estate Partners, L.P.

Dated: By: _____

Title: _____

Exhibit 3.4

CERTIFICATE OF LIMITED PARTNERSHIP
OF
AMERICAN REAL ESTATE HOLDINGS, L.P.

This Certificate of Limited Partnership of American Real Estate Holdings, L.P. (the "Partnership"), dated February 13, 1987, is being duly executed and filed by American Property Investors, Inc., as sole General Partner, to form a limited partnership under the Delaware Revised Uniform Limited Partnership Act (6 Del. C.ss.17-101 et seq.).

1. The name of the limited partnership formed hereby is American Real Estate Holdings, L.P.

2. The address of the registered office of the Partnership in the State of Delaware is c/o The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801, and the name and address of the registered agent for service of process on the Partnership in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Wilmington, New Castle County, Delaware 19801.

3. The name and mailing address of the sole general partner of the Partnership is:

American Property Investors, Inc.
666 Third Avenue
New York, New York 10017

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Limited Partnership as of the date first above written.

GENERAL PARTNER

AMERICAN PROPERTY INVESTORS, INC.

By: /s/
_____
Vice President

FIRST AMENDMENT

TO

CERTIFICATE OF LIMITED PARTNERSHIP

OF

AMERICAN REAL ESTATE HOLDINGS, L.P.

The Certificate of Limited Partnership (hereinafter, the "Certificate") of American Real Estate Holdings, L.P., a Delaware limited partnership (hereinafter, the "Partnership"), was filed with the Secretary of State of the State of Delaware on February 17, 1987 pursuant to Section 17-201 of 6 Del. C. ss.ss.17-101 et seq. Pursuant to Section 17-202 of 6 Del. C.ss.ss.17-101 et seq., the undersigned desires to amend Item 1 of the Certificate by deleting Item 1 in its entirety and substituting the following therefor:

"1. The name of the Partnership shall be American Real Estate Holdings Limited Partnership, and the business and activities of the Partnership as of the date of the execution of this Amendment shall be conducted under that name."

WHEREFORE, the undersigned hereto has executed this Amendment to the Certificate on this 10th day of March, 1987.

AMERICAN PROPERTY INVESTORS, INC.
General Partner

By: /s/

____

Executive V.P.

EXHIBIT 3.5

AMENDED AND RESTATED

AGREEMENT OF LIMITED PARTNERSHIP

OF

AMERICAN REAL ESTATE HOLDINGS LIMITED PARTNERSHIP

TABLE OF CONTENTS

LIST OF EXHIBITS

AMENDED AND RESTATED AGREEMENT OF LIMITED PARTNERSHIP OF AMERICAN REAL ESTATE HOLDINGS LIMITED PARTNERSHIP

This Amended and Restated Agreement of Limited Partnership (this "Agreement") is entered into as of May 21, 1987, by and among American Property Investors, Inc., a Delaware corporation, as general partner (the "General Partner"), and Julia DeSantis, as the organizational limited partner (the "Organizational Limited Partner"), and all other persons and entities who shall in the future become limited partners of this limited partnership in accordance with the provisions hereof (the "Limited Partners"). (The General Partner and the Limited Partners are sometimes hereinafter referred to individually as a "Partner" and collectively as the "Partners".)

Whereas, the General Partner and the Organizational Limited Partner entered into an Agreement of Limited Partnership, dated as of April 29, 1987 (the "Partnership Agreement");

Whereas, the General Partner and the Organizational Limited Partner executed an Amendment to the Partnership Agreement, dated as of May 12, 1987; and

Whereas, the General Partner and the Organizational Limited Partner now desire to further amend the Partnership Agreement in certain respects;

Now, therefore, in consideration of the foregoing and of the covenants and agreements hereinafter set forth, the Partnership Agreement is hereby amended and restated in its entirety to read as follows:

ARTICLE I

Certain Definitions

Unless the context otherwise specifies or requires, the terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified.

Accounting Firm: The firm of Touche Ross & Co. or such other nationally recognized firm, of independent public accountants as shall be selected and approved by the General Partner from time to time.

Adjusted Property: Any property the Carrying Value of which has been adjusted pursuant to Section 4.05.

Affiliate: (a) Any Person directly or indirectly owning, controlling or holding power to vote ten percent (10%) or more of the outstanding voting securities of the Person in question; (b) any Person ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the Person in question; (c) any Person directly or indirectly controlling, controlled by, or under common control with the Person in question; (d) if the Person in question is a corporation, any executive officer or director of the Person in question or of any corporation directly or indirectly controlling the Person in question; and (e) if the Person in question is a partnership, any general partner owning or controlling ten percent (10%) or more of either the capital or profit interests in such partnership. As used in this definition of "Affiliate," the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

Agreed Value: The fair market value of a Contributed Property as of the date of contribution, as determined by the General Partner using such reasonable methods as may be adopted by the General Partner.

Agreement: This Amended and Restated Agreement of Limited Partnership, as it may be amended or supplemented from time to time.

API Investor: A Person who was a general partner of one or more API Partnerships, an Affiliate of one or more such API general partners who performed certain services for one or more of the API Partnerships and a Person who was a limited partner in one or more of the API Partnerships.

API Partnerships: The thirteen American Property Investors limited partnerships, as described in the Registration Statement.

API Property: Any interest in real estate held by any of the API Partnerships.

AREP: American Real Estate Partners, L.P., a Delaware limited partnership, and any successors.

AREP Partnership Agreement: The Amended and Restated Agreement of Limited Partnership of AREP, as it may be amended or supplemented from time to time.

Audit Committee: The committee comprised of directors of the General Partner not affiliated with the General Partner or its Affiliates, other than as a director of the General Partner, formed to review certain conflicts of interest and certain other matters and to perform certain other functions pursuant to Section 6.11.

Book-Tax Disparities: The differences between a Partner's Capital Account balance, as maintained pursuant to Section 4.05, and such balance had the Capital Account been maintained strictly in accordance with tax accounting principles (such disparities reflecting the differences between the Carrying Value of either Contributed Properties or Adjusted Properties, as adjusted from time to time, and the adjusted basis thereof for federal income tax purposes).

Business Day: Monday through Friday of each week, except that a legal holiday recognized as such by the Government of the United States or the State of New York shall not be regarded as a Business Day.

Capital Account: The capital account established and maintained for each Partner pursuant to Section 4.05.

Capital Contribution: Any cash, cash equivalents or Contributed Property contributed to the Partnership by or on behalf of a Contributing Partner pursuant to Article IV.

Capital Transaction: Any (1) incurring of indebtedness secured by Partnership Assets, (2) refinancing of any indebtedness secured by Partnership Assets, (3) sale or exchange, liquidation or other disposition of any Partnership Assets, (4) net condemnation award or casualty loss recovery with respect to any Partnership Assets, (5) elimination of any funded reserve or (6) liquidation or dissolution of the Partnership.

Carrying Value: With respect to (a) Contributed Property, the Agreed Value of such Property reduced (but not below zero) by all deductions for depreciation, amortization, cost recovery and expense in lieu of depreciation debited to the Capital Accounts of Partners pursuant to Section 4.05(a) with respect to such Property as of the time of determination, and (b) any other property, the adjusted basis of such property for federal income tax purposes as of the time of determination. The Carrying Value of any property shall be adjusted in accordance with Section 4.07(d), and to reflect changes, additions, or other adjustments to the Carrying Value for dispositions, acquisitions or improvements of Partnership Assets, as deemed appropriate by the General Partner.

Cash Flow: The excess of the operating revenues of the Partnership over the sum of (i) the operating expenses of the Partnership (including any fees payable to the General Partner and its Affiliates), (ii) debt service payments in connection with any debt obligations of the Partnership, (iii) provisions for such reserves from the operating revenues of the Partnership as the General Partner deems appropriate and (iv) capital expenditures to the extent not made out of established reserves.

Certificate of Limited Partnership: The certificate of limited partnership filed on behalf of the Partnership with the Secretary of State of the State of Delaware, as the same may be amended and/or restated from time to time.

Closing: The "closing time" as defined in the Merger Agreements.

Closing Date: The date on which the Closing occurs.

Code: The Internal Revenue Code of 1986, in effect from time to time, and applicable regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

Commission: The Securities and Exchange Commission.

Contributed Property: A Contributing Partner's interest in each property or other consideration, in such form as may be permitted by the Delaware Act, but excluding cash and cash equivalents, contributed to the Partnership by such Contributing Partner (or deemed contributed to the Partnership upon termination thereof pursuant to Section 708 of the Code). Once the Carrying Value of a Contributed Property is adjusted pursuant to Section 4.05, such property shall no longer constitute a Contributed Property for purposes of Section 5.02 but shall be deemed an Adjusted Property for such purposes.

Contributing Partner: Each Partner contributing (or deemed to have contributed upon termination of the Partnership pursuant to Section 708 of the Code) a Contributed Property.

Delaware Act: The Delaware Revised Uniform Limited Partnership Act (Del. Code Ann. tit. 6 Sections 17-101 et seq.), as amended to date and as it may be amended from time to time hereafter, and any successor to such Act.

Exchange: The acquisition by the Partnership of the API Properties and other assets, subject to the liabilities, of the API Partnerships in connection with which AREP will acquire a

99% limited partner interest in the Partnership and the API Investors will be issued Units, as described in the Registration Statement.

Exchange Act: The Securities Exchange Act of 1934, as amended, and the regulations of the Commission promulgated thereunder.

FIRPTA: The Foreign Investment in Real Property Tax Act of 1980, as amended from time to time, and applicable regulations thereunder.

Fiscal Year: The fiscal year of the Partnership for financial accounting purposes, and for federal, state, and local income tax purposes, which shall be the calendar year unless changed by the General Partner in accordance with Section 8.03.

General Partner: American Property Investors, Inc., a Delaware corporation, or any successor appointed pursuant to Sections 9.03, 10.01 or 10.02 hereof, as the case may be.

Limited Partners: All Persons admitted to the Partnership as Limited Partners pursuant to Section 9.05, and any successor or additional limited partners admitted to the Partnership pursuant to Section 9.06.

Liquidating Trustee: The General Partner, unless the dissolution of the Partnership is caused by the withdrawal, bankruptcy, removal or dissolution of the General Partner, in which event the Liquidating Trustee shall be the Person or Persons selected pursuant to Section 11.05.

Majority Interest: Limited Partners who are Limited Partners with respect to more than fifty percent (50%) of the total number of all outstanding Partnership Interests.

Merger: The merger of the API Partnerships that approve the Exchange with and into the Partnership, as described in the Registration Statement.

Merger Agreements: Agreements pursuant to which the API Partnerships that approve the Exchange are merged into the Partnership and pursuant to which the API Properties and the other assets, subject to the liabilities, of the API Partnerships are contributed to the Partnership pursuant to Section 4.03, a form of which is attached as Appendix B to the Proxy Statement/Prospectus included as part of the Registration Statement.

NASDAQ: The National Association of Securities Dealers Automated Quotations System.

National Securities Exchange: An exchange registered with the Commission under Section 6(a) of the Exchange Act.

New Property: Any direct or indirect interest in real estate acquired by the Partnership or by AREP subsequent to the consummation of the Exchange.

Organizational Limited Partner: Julia DeSantis.

Partner: The General Partner or a Limited Partner. "Partners" means the General Partner and all Limited Partners.

Partnership: The limited partnership governed by this Agreement and any successor limited partnership thereto continuing the business of the Partnership which is a reformation or reconstitution of the limited partnership governed by this Agreement.

Partnership Assets: All assets and property, whether tangible or intangible and whether real, personal or mixed, at any time owned by the Partnership.

Partnership Interest: As to any Partner, all of the interests of that Partner in the Partnership, including, without limitation, such Partner's (i) right to a distributive share of the profits and losses of the Partnership, (ii) right to a distributive share of Partnership Assets and (iii) right, if the General Partner, to participate in the management of the business and affairs of the Partnership.

Percentage Interest: The Percentage Interest of the General Partner shall be one percent (1%). The aggregate Percentage Interest of the Limited Partners shall be ninety-nine percent (99%).

Person: Any individual, corporation, association, partnership, joint venture, trust, estate, unincorporated organization, association or other entity.

Property Management Agreement: The agreement to be entered into on the Closing Date by and between the Partnership and Resources Property Management Corp., a Delaware corporation, pursuant to which Resources Property Management Corp. will perform certain property management and supervisory services in respect of the New Properties.

Recapture Income: Any gain recognized by the Partnership (but computed without regard to any adjustment required by Sections 734 or 743 of the Code) on the disposition of any Partnership Asset that does not constitute capital gain for federal income tax purposes because such gain represents the recapture of deductions previously taken with respect to such property or assets.

Record Holder: Shall have the same meaning ascribed to it in the AREP Partnership Agreement.

Registration Statement: The Registration Statement on Form S-4 to be filed by AREP with the Commission under the Securities Act to register the offering and sale of Units pursuant to the Exchange, as the same may be amended from time to time.

Residual Gain or Residual Loss: Any net gain or net loss, as the case may be, of the Partnership recognized for federal income tax purposes resulting from a sale, exchange or other disposition of a Contributed Property or Adjusted Property, to the extent such net gain or net loss is not allocated pursuant to Section 5.02(b) to eliminate Book-Tax Disparities.

Section 754 Election: The election which may be made by the Partnership pursuant to Section 754 of the Code.

Securities Act: The Securities Act of 1933, as amended, and the regulations of the Commission promulgated thereunder.

Termination Date: December 31, 2085.

Unit: A unit of limited partner interest in AREP as defined in the AREP Partnership Agreement.

Unit Price: Shall have the same meaning ascribed to it in the AREP Partnership Agreement.

Unrealized Gain: The excess, if any, of the fair market value of a Partnership Asset as of the date of determination over the Carrying Value of such Partnership Asset as of the date of determination (prior to any adjustment to be made pursuant to Section 4.05(d) as of such date).

Unrealized Loss: The excess, if any, of the Carrying Value of a Partnership Asset as of the date of determination over the fair market value of such Partnership Asset as of the date of determination (prior to any adjustment to be made pursuant to Section 4.05(d) as of such date).

ARTICLE II

Formation; Name; Place of Business; Term

2.01 Formation of Partnership; Certificate of Limited Partnership. The General Partner and the Organizational Limited Partner heretofore have formed and hereby agree to continue the Partnership as a limited partnership pursuant to the provisions of the Delaware Act. Except as expressly provided herein to the contrary, the rights and obligations of the Partners and the administration and termination of the Partnership shall be governed by the Delaware Act. In accordance with the Delaware Act, the General Partner has filed with the Secretary of State of the State of Delaware the Certificate of Limited Partnership. If the laws of any jurisdiction in which the Partnership transacts business so require, the General Partner also shall file with the appropriate office in that jurisdiction a copy of the Certificate of Limited Partnership and any other documents necessary to establish and maintain the Limited Partners' limited liability in such jurisdiction. The Partners further agree and obligate themselves to execute, acknowledge, and cause to be filed for record, in the place or places and manner prescribed by law, any amendments to the Certificate of Limited Partnership as may be required, either by the Delaware Act, by the laws of a jurisdiction in which the Partnership transacts business, or by this Agreement, to reflect changes in the information contained therein or otherwise to comply with the requirements of law for the continuation, preservation, and operation of the Partnership as a limited partnership pursuant to the Delaware Act.

2.02 Name of Partnership. The name under which the Partnership shall conduct its business is American Real Estate Holdings Limited Partnership. The business of the Partnership may be conducted under any other name deemed necessary or desirable by the General Partner, in its sole and absolute discretion. The General Partner promptly shall execute, file, and record any assumed or fictitious name certificates or other statements or certificates as are required by the laws of Delaware or any other state in which the Partnership transacts business. The General Partner, in its sole and absolute discretion, may change the name of the Partnership at any time and from time to time.

2.03 Place of Business. The principal place of business of the Partnership shall be located at such place or places within the United States as the General Partner shall, in its sole and absolute discretion, determine. The General Partner may, in its sole and absolute discretion, establish and maintain such other offices and additional places of business of the Partnership, either within or without the State of Delaware, as it deems appropriate.

2.04 Registered Office and Registered Agent. The address of the registered office of the Partnership in the State of Delaware shall be Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and the registered agent for service of process on the Partnership in the State of Delaware at such address shall be The Corporation Trust Company.

2.05 Term. The Partnership commenced on the date upon which the Certificate of Limited Partnership was duly filed with the Secretary of State of the State of Delaware pursuant to Section 2.01 and shall continue until the Termination Date unless dissolved and liquidated before the Termination Date in

accordance with the provisions of Article XI.

ARTICLE III

Purposes; Nature of Business

3.01 Purposes and Business. The purposes of the Partnership shall be (a) to directly or indirectly invest in, acquire, own, hold, manage, operate, sell, exchange and otherwise dispose of interests in real estate and (b) to enter into any lawful transaction and engage in any lawful activities in furtherance of the foregoing purposes (including, without limitation, any transaction or activity outside the normal scope of the Partnership's business).

ARTICLE IV

Capital

4.01 Capital Contributions of General Partner. The General Partner shall not be obligated to make any initial Capital Contribution to the Partnership, but shall be required to make Capital Contributions to the Partnership in accordance with Sections 4.04 and 4.06(b) hereof.

4.02 Capital Contributions of Organization Limited Partner. Upon the formation of the Partnership, the Organizational Limited Partner made a Capital Contribution in the amount of Ninety-Nine Dollars ($99) in cash. Concurrently with the Closing, the Capital Contribution of the Organizational Limited Partner shall be returned, without interest, the Organizational Limited Partner shall withdraw from the Partnership, and the Organizational Limited Partner, as such, shall have no further rights, claims or interests as a Partner in and to the Partnership.

4.03 Initial Capital Contributions. On the Closing Date and pursuant to the Merger Agreements, each API Partnership

that participates in the Exchange shall contribute to the Partnership, the API Properties and the other assets, subject to the liabilities, of such API Partnership, and, in exchange therefore, the API Investors in such API Partnerships shall be issued Partnership interests in the Partnership. It is hereby acknowledged that immediately thereafter and pursuant to the Merger Agreements, all API Investors in API Partnerships that participate in the Exchange shall contribute to AREP all of the Partnership Interests in the Partnership received by them in the Exchange in return for the issuance of Units to such API Investors, and AREP shall thereby be the sole Limited Partner of the Partnership.

4.04 No Additional Capital Contributions. No Partner shall be required to make any additional Capital Contribution, except as provided in the Delaware Act; provided, however, that, in connection with any amounts contributed to the Partnership by AREP as a result of AREP's issuance of additional Units or other securities of AREP pursuant to Section 4.05 of the AREP Partnership Agreement, the General Partner shall make Capital Contributions to the Partnership, which contributions have an Agreed Value reduced by any indebtedness either assumed by the Partnership upon such contribution or to which such contribution is subject when contributed, in an amount necessary to enable it at all times to maintain its aggregate Capital Contributions in an amount proportionally equal to its Percentage Interest in the Partnership.

4.05 Capital Accounts.

(a) A separate Capital Account shall be established and maintained for each Partner. The Capital Account of each Partner shall be credited with the cash and the Agreed Value of any property, contractual rights or other non-cash consideration (net of liabilities assumed by the Partnership and liabilities to which the contributed property is subject) contributed or deemed contributed to the Partnership by such Partner, plus all income, gain, or profits of the Partnership computed in accordance with Section 4.05(b) and allocated to such Partner pursuant to Section 5.01, and shall be debited with the sum of (i) all losses or deductions of the Partnership computed in accordance with Section 4.05(b) and allocated to such Partner pursuant to Section 5.01, (ii) such Partner's distributive share of expenditures of the Partnership described in Section 705(a)(2)(B) of the Code and (iii) all cash and the fair market value of

any property (net of liabilities assumed by such Partner and liabilities to which such property is subject) distributed or deemed distributed by the Partnership to such Partner. Notwithstanding anything to the contrary contained herein, the Capital Account of each Partner shall be determined in all events solely in accordance with the rules set forth in Treasury

Regulation Section 1.704-1(b)(2)(iv), as the same may be amended or revised hereafter. Any references in any Section or subsection of this Agreement to the Capital Account of a Partner shall be deemed to refer to such Capital Account as the same may be credited or debited from time to time.

(b) For purposes of computing the amount of any item of income, gain, deduction or loss to be reflected in the Capital Accounts, the determination, recognition and classification of each such item shall be the same as its determination, recognition and classification for federal income tax purposes (including any method of depreciation, cost recovery or amortization used for this purpose), provided that:

(i) In accordance with the requirements of Section 704(c) of the Code, any deductions for depreciation, cost recovery, amortization or expense in lieu of depreciation, attributable to a Contributed Property shall be determined as if the adjusted basis of the property on the date it was acquired by the Partnership was equal to the Agreed Value of such Partnership Asset as of such date. Upon an adjustment pursuant to Section 4.05(d)(i) to the Carrying Value of any Partnership Asset subject to depreciation, cost recovery or amortization, any further deductions for such depreciation, cost recovery or amortization attributable to such Asset shall be determined as if the adjusted basis of such Asset was equal to the Carrying Value of such Asset immediately following such adjustment;

(ii) Any income, gain or loss attributable to the taxable disposition of any Partnership Asset shall be determined by the Partnership as if the adjusted basis of such Partnership Asset as of such date of disposition was equal to the amount of the Carrying Value of such Partnership Asset as of such date;

(iii) The computation of all items of income, gain, loss, and deduction shall be made without regard to the Section 754 Election; and

(iv) The Partnership shall be treated as owning directly its proportionate share (as determined by the General Partner) of all property owned by any partnership in which the Partnership has an interest.

(c) In general, a transferee of a Partnership Interest shall succeed to the Capital Account relating to the Partnership Interest transferred. However, if the transfer causes a termination of the Partnership under Section 708(b)(1)(B) of the Code, the Partnership Assets shall be deemed to have been

distributed in liquidation of the Partnership to the Partners (including a transferee of a Partnership Interest) and deemed recontributed by such Partners in reconstitution of the Partnership. The Capital Accounts of the reconstituted Partnership shall be maintained in accordance with the principles of this Section 4.05.

(d) Immediately prior to an actual distribution of any Partnership Asset, the Capital Accounts of the Partners and the Carrying Values of all Partnership Assets shall be adjusted (consistent with the provisions hereof and of Section 704 of the Code) upward or downward to reflect any Unrealized Gain or Unrealized Loss attributable to each Partnership Asset (as if such Unrealized Gain or Unrealized Loss had been recognized upon an actual sale of each such Partnership Asset, immediately prior to such distribution, and had been allocated to the Partners, at such time, pursuant to Section 5.01). The Carrying Values of the respective Partnership Assets shall be determined by the General Partner using such methods as it deems appropriate in its sole and

absolute discretion.

4.06 Negative Capital Accounts.

(a) Except to the extent provided in Section 4.06(b), no Partner shall be required to pay to the Partnership or to any other Partner any deficit or negative balance which may exist from time to time in such Partner's Capital Account.

(b) Notwithstanding the foregoing, if, upon the dissolution and termination of the Partnership, the General Partner shall have a deficit or negative balance in its Capital Account following the allocation of all income and loss from Capital Transactions pursuant to Section 5.02, then the General Partner shall be required to pay the lesser of (i) the amount of such deficit or negative balance or (ii) the excess of one and one-hundredth percent (1.01%) of the Capital Contributions of the Limited Partners over the Capital Contribution of the General Partner to the Partnership. After the payment of any remaining debts and liabilities of the Partnership as provided for in Sections 5.02 and 11.05, any such amount paid to the Partnership shall be distributed to the Partners in accordance with their respective positive Capital Account balances, as provided for in Section 5.03.

4.07 No Interest on Amounts in Capital Accounts. No Partner shall be entitled to receive any interest on its outstanding Capital Account balance.

4.08 Loans by Partners. Loans by any Partner to the Partnership shall not be considered Capital Contributions. If

any Partner shall advance funds to the Partnership in excess of the amounts required hereunder to be contributed by it to the capital of the Partnership, the making of such advances shall not result in any increase in the amount of the Capital Account of such Partner or entitle such Partner to any increase in its Percentage Interest (as defined in Article V). The amounts of any such advances shall be a debt of the Partnership to such Partner and shall be payable or collectible only out of the Partnership Assets in accordance with the terms and conditions upon which such advances are made.

4.09 Liability of Limited Partners. Except as provided in the Delaware Act, none of the Limited Partners shall be personally liable for any debts, liabilities, contracts or obligations of the Partnership.

ARTICLE V

Allocations of Income and Loss; Distributions

5.01 Capital Account Allocations. For purposes of maintaining the Capital Accounts and determining the rights of the General Partner and the Limited Partners among themselves, each item of income, gain, loss and deduction shall be allocated among the General Partner and the Limited Partners in the following manner:

(a) Except as otherwise provided in this Section 5.01, all items of income, gain, loss and deduction of the Partnership, computed in accordance with Section 4.05(b), and any income of the Partnership described in Section 705(a)(1)(B) of the Code shall be allocated to the General Partner and the Limited Partners in accordance with their respective Percentage Interests.

(b) In the event the General Partner or a Limited Partner receives an adjustment, allocation or distribution described in Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), such General Partner or Limited Partner shall be specially allocated items of income and gain in an amount and manner sufficient to eliminate, as quickly as possible, any deficit balance in such General Partner's or Limited Partner's Capital Account created by such adjustment, allocation or distribution. This Section 5.01(b) is intended to constitute a "qualified income offset" within the meaning of Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(3).

(c) If the Capital Account of the General Partner or a Limited Partner has a deficit balance resulting in whole

or in part from allocations of loss or deduction attributable to nonrecourse debt that is secured by Partnership Assets, which deficit balance exceeds such General Partner's or Limited Partner's share of Minimum Gain (as defined below), then such General Partner or Limited Partner shall first be allocated items of income and gain in the amount and in the proportions needed to eliminate such excess as quickly as possible. For purposes of this Section 5.01(c), "Minimum Gain" means the excess of the outstanding principal balance of nonrecourse debt that is secured by Partnership Assets over the Partnership's adjusted tax basis of such Assets. This Section 5.01(c) is intended to comply with the requirements of Treasury Regulation Section 1.704-1(b)(4)(iv).

5.02 Tax Allocations. For federal income tax purposes, each item of income, gain, loss and deduction of the Partnership shall be allocated among the General Partner and the Limited Partners in the following manner:

(a) Except as otherwise provided in this Section 5.02, all such items of income, gain, loss and deduction of the Partnership shall be allocated to the General Partner and the Limited Partners in accordance with their Percentage Interests.

(b) In the case of a Contributed Property or Adjusted Property, items of income, gain, loss, depreciation and cost recovery deductions attributable thereto shall be allocated for federal income tax purposes among the General Partner and the Limited Partners as follows:

(1) In the case of a Contributed Property, such items shall be allocated among the General Partner and the Limited Partners in a manner that takes into account the variation between the Agreed Value of such property and its adjusted basis at the time of contribution in attempting to eliminate Book-Tax Disparities. Except as otherwise provided in Section 5.02(c) and 5.02(d) below, any item of Residual Gain or Residual Loss attributable to a Contributed Property shall be allocated among the General Partner and the Limited Partners in accordance with their Percentage Interests;

(2) In the case of an Adjusted Property, such items shall (a) first, be allocated among the General Partner and the Limited Partners in a manner consistent with the principles of Section 704(c) of the Code to take into account the Unrealized Gain or Unrealized

Loss attributable to such property and the allocations thereof pursuant to Section 4.05(d)(i) in attempting to eliminate Book-Tax Disparities, and (b) second, in the event such property was originally a Contributed Property, be allocated among the General Partner and the Limited Partners in a manner consistent with the first sentence of paragraph (b) (1) above. Except as otherwise provided in Sections 5.02(c) and 5.02(d) below, any items of Residual Gain or Residual Loss attributable to an Adjusted Property shall be allocated among the General Partner and the Limited Partners in accordance with the provisions of Section 5.02(a).

(c) If the General Partner or a Limited Partner receives any adjustments, allocations or distributions described in Treasury Regulation Section 1.704-(b)(2)(ii)(d)(4), (5) and (6), items of Partnership income and gain shall be specially allocated to such General Partner or Limited Partner in an amount and manner consistent with the allocation of income and gain pursuant to Section 5.01(b).

(d) If the General Partner's or a Limited Partner's Capital Account has a deficit balance as described in Section 5.01(c), items of income and gain of the Partnership shall be allocated to such

General Partner or Limited Partner in an amount and manner consistent with the allocation of income and gain pursuant to Section 5.01(c).

(e) To the extent of any Recapture Income resulting from the sale or other taxable disposition of Partnership Assets, the amount of any gain from such disposition allocated to (or recognized by) the General Partner or a Limited Partner (or its successor in interest) for federal income tax purposes pursuant to the above provisions shall be deemed to be Recapture Income to the extent such General Partner or Limited Partner has been allocated or has claimed any deduction directly or indirectly giving rise to the treatment of such gain as Recapture Income.

(f) All items of income, gain, loss, deduction and basis allocation recognized by the Partnership for federal income tax purposes and allocated to the General Partner and the Limited Partners in accordance with the provisions hereof shall be determined without regard to the Section 754 Election which may be made by the Partnership; provided, however, such allocations, once made, shall be adjusted as necessary or appropriate to take into account those adjustments permitted by Sections 734 and 743 of the

Code and, where appropriate, to provide only the General. Partner and the Limited Partners recognizing gain on Partnership distributions covered by Section 734 of the Code with the federal income tax benefits attributable to the increased basis in Partnership Assets resulting from the Section 754 Election.

(g) It is intended that the allocations prescribed in Sections 5.02(b)(l) and (b)(2) constitute allocations for federal income tax purposes that are consistent with Section 704 of the Code and comply with any limitations or restrictions therein, to the extent reasonably possible. The General Partner shall have sole discretion to (i) adopt such conventions as it deems appropriate in determining the amount of depreciation and cost recovery deductions, (ii) make special allocations of income or deduction and (iii) amend the provisions of this Agreement as appropriate to reflect the proposal or promulgation of Treasury Regulations under Section 704(c) of the Code.

(h) Solely for purposes of the interpretation and application of this Article V, the Partnership shall be treated as owning its proportionate share of all properties owned by any partnerships in which the Partnership has an interest.

5.03. Distributions of Cash Flow and Capital Proceeds.

(a) Cash Flow of the Partnership for each Fiscal Year or portion thereof shall be distributed quarter-annually, or at any other time to the extent deemed appropriate by the General Partner in its sole and absolute discretion, in the following order of priority:

(i) first, to the payment of any debts and liabilities of the Partnership which shall then be due and payable;

(ii) next, to the establishment of such reserves as the General Partner deems reasonably necessary to provide for any future, contingent or unforeseen liabilities or obligations of the Partnership; and

(iii) the balance, if any, to the General Partner and the Limited Partners in accordance with their respective Percentage Interests.

(b) If distributed, proceeds of Capital Transactions, other than on liquidation or dissolution of the Partnership, shall be distributed as follows:

(i) first, to discharge (to the extent required by any lender or creditor other than any Partner in its capacity as such) debts and obligations of the Partnership which are then due and payable;

(ii) next, to the establishment of such reserves as the General Partner deems reasonably necessary to provide for any future contingent or unforeseen liabilities or obligations of the Partnership; and

(iii) the balance, if any, to the General Partner and the Limited Partners in accordance with their respective Percentage Interests.

(c) The General Partner shall convert all non-cash assets of the Partnership to cash before any distribution upon liquidation or dissolution of the Partnership. Distribution of proceeds on liquidation or dissolution of the Partnership, and any other remaining assets of the Partnership to be distributed to the General Partner and the Limited Partners in connection with the dissolution and liquidation of the Partnership pursuant to Article XI, shall be made as follows:

(i) first, to the payment of any debts and liabilities of the Partnership which shall then be due and payable;

(ii) next, to the establishment of such reserves as the General Partner deems reasonably necessary to provide for any future, contingent or unforeseen liabilities or obligations of the Partnership; and

(iii) next, pro rata in accordance with and to the extent of the positive balances in the General Partner's and Limited Partners' respective Capital Accounts.

ARTICLE VI

Management

6.01 Management and Control of Partnership. Except as otherwise expressly provided or limited by the provisions of this Agreement (including, without limitation, the provisions of Article VII), the General Partner shall have full, exclusive and complete discretion to manage and control the business and affairs of the Partnership, to make all decisions affecting the business and affairs of the Partnership, and to take all such actions as it deems necessary or appropriate to accomplish the purposes of the Partnership as set forth herein. The General Partner shall use reasonable efforts to carry out the purposes

of the Partnership and shall devote to the management of the business and affairs of the Partnership such time as the General Partner, in its sole and absolute discretion, shall deem to be reasonably required for the operation thereof. No Limited Partner shall have any authority, right or power to bind the Partnership, or to manage or control, or to participate in the management or control of, the business and affairs of the Partnership in any manner whatsoever.

6.02 Powers of General Partner. Subject to Article XII, the General Partner (acting on behalf of and at the expense of the Partnership) shall have the right, power and authority, in the management and control of the business and affairs of the Partnership, to do or cause to be done any and all acts deemed by the General Partner to be necessary or appropriate to carry out the purposes and business of the Partnership. The power and authority of the General Partner pursuant to this Agreement shall be liberally construed to encompass all acts and activities in which a partnership may engage under the Delaware Act, subject to the provisions of Section 3.01 hereof. The expression of any power, authority or right of the General Partner in this Agreement shall not limit or exclude any other power, authority or right which is not specifically or expressly set forth in this Agreement or the Delaware Act.

6.03 Compensation Plans. The General Partner shall have the power and authority to cause the Partnership to pay pensions, and establish and carry

out pension, profit-sharing, bonus, purchase, option, savings, thrift and other retirement, incentive and benefit plans, trusts and provisions for the General Partner, employees of the General Partner or the Partnership, and any partner, director or officer of the General Partner, including plans, trusts and provisions which may provide for the ownership, acquisition, holding or disposition of the securities of the Partnership or AREP, and to the full extent permitted by law the General Partner may indemnify and maintain insurance on behalf of any fiduciary of such plans, trusts or provisions, including, without limitation, health insurance, medical and dental reimbursement, life insurance, accident insurance, disability insurance and other plans, trusts or provisions.

6.04 Distributions. The General Partner shall have the power and authority to cause the Partnership, from time to time and to the extent deemed appropriate by the General Partner in its sole and absolute discretion, to distribute cash or Partnership Assets to the Partners in accordance with Article V. Nothing in this Agreement or this Section 6.04 shall serve as a limitation on the General Partner's right to retain or use Partnership Assets or the revenues of the Partnership as, in the

sole and absolute discretion of the General Partner, may be required to satisfy the anticipated present and future cash needs of the Partnership, whether for operations, expansion, improvements, acquisitions or otherwise.

6.05 Election to Be Governed by Successor Limited Partnership Law. The General Partner may, in its sole and absolute discretion and without any vote or concurrence of the Limited Partners, elect for the Partnership to be governed by any statutes adopted to succeed or replace the Delaware Act on or after the date any part of such successor or replacement statute takes effect and to procure any permits, orders or approvals of any governmental authority in connection with such election.

6.06 Combination with AREP. The General Partner, in its sole and absolute discretion, may cause the Partnership to be merged into, consolidated or combined with AREP, as provided in the AREP Partnership Agreement, without the need for any vote or consent by the Limited Partners; provided, however, that the General Partner shall not cause the Partnership to be merged into, consolidated or combined with AREP unless it has received an opinion of counsel for the Partnership to the effect that such merger, consolidation or combination would not cause (i) the loss of limited liability of the Limited Partners under this Agreement, (ii) the loss of limited liability of the Record Holders under the AREP Partnership Agreement and (iii) AREP to be treated as an association taxable as a corporation for federal income tax purposes. Upon any such merger, consolidation or combination, the interests of the Limited Partners in the Partnership and the compensation and reimbursements to the General Partner shall be adjusted and this Agreement shall be amended without the need for any vote of the Limited Partners to provide the same relative interests, compensation and reimbursements as they had in the Partnership and AREP, taken together, prior to such merger, consolidation or combination.

6.07 Reliance by Third Parties. Notwithstanding any other provision of this Agreement to the contrary, no lender or purchaser, including any purchaser of property from the Partnership or any other Person dealing with the Partnership, shall be required to look to the application of proceeds hereunder or to verify any representation by the General Partner as to the extent of the interest in the assets of the Partnership that the General Partner is entitled to encumber, sell or otherwise use, and any such lender or purchaser shall be entitled to rely exclusively on the representations of the General Partner as to its authority to enter into such financing or sale arrangements and shall be entitled to deal with the General Partner as if it were the sole party in interest therein, both legally and beneficially. Each Limited Partner hereby waives any and all

defenses or other remedies that may be available against such lender, purchaser or other Person to contest, negate or disaffirm any action of the General Partner in connection with any sale or financing. In no event shall any Person dealing with the General Partner or the General Partner's representative with respect to any business or property of the Partnership be obligated to ascertain

that the terms of this Agreement have been complied with, or be obligated to inquire into the necessity or expedience of any act or action of the General Partner or the General Partner's representative; and every contract, agreement, deed, mortgage, security agreement, promissory note or other instrument or document executed by the General Partner or the General Partner's representative with respect to any business or property of the Partnership shall be conclusive evidence in favor of any and every Person relying thereon or claiming there under that (a) at the time of the execution and/or delivery thereof this Agreement was in full force and effect, (b) such instrument or document was duly executed in accordance with the terms and provisions of this Agreement and is binding upon the Partnership, and (c) the General Partner or the General Partner's representative was duly authorized and empowered to execute and deliver any and every such instrument or document for and on behalf of the Partnership.

6.08 Title to Partnership Assets. Title to Partnership Assets, whether real, personal or mixed, tangible or intangible, shall be deemed to be owned by the Partnership as an entity, and no Partner individually or collectively, shall have any ownership interest in such Partnership Assets or any portion thereof. Title to any or all of the Partnership Assets may be held in the name of the Partnership or the General Partner, or of one or more nominees, as the General Partner may determine. The General Partner hereby declares and warrants that any Partnership Assets for which legal title is held in the name of the General Partner shall be held in trust by the General Partner for the use and benefit of the Partnership in accordance with the terms or provisions of this Agreement. All Partnership Assets shall be recorded as the property of the Partnership on its books and records, irrespective of the name in which legal title to such Partnership Assets is held.

6.09 Other Business Activities of Partners. Any Partner or Affiliate thereof (including, without limitation, the General Partner and any of its Affiliates) may have other business interests or may engage in other business ventures of any nature or description whatsoever, whether presently existing or hereafter created, including, without limitation, the ownership, leasing, management, operation, franchising, syndication and/or development of real estate, and may compete, directly or indirectly, with the business of the Partnership. No Partner or

Affiliate thereof shall incur any liability to the Partnership as the result of such Partner's or Affiliate's pursuit of such other business interests and ventures and competitive activity, and neither the Partnership nor any of the Partners shall have any right to participate in such other business interests or ventures or to receive or share in any income or profits derived therefrom.

6.10 Transactions with General Partner or Affiliates. In addition to transactions specifically contemplated by the terms and provisions of this Agreement, including, without limitation, Article VII, the Partnership is expressly permitted to enter into other transactions with the General Partner or any of its Affiliates, including, without limitation, buying and selling properties from or to the General Partner and any of its Affiliates and borrowing and lending money from or to the General Partner or any of its Affiliates, subject to the limitations contained in this Agreement, the Delaware Act and in the Registration Statement.

6.11 Audit Committee; Resolution of Conflicts of Interest.

(a) On the Closing Date, the General Partner shall form an Audit Committee to be comprised of directors of the General Partner not affiliated with the General Partner or its Affiliates other than as a director of the General Partner. The functions of the Audit Committee shall be: (i) to review the Partnership's financial and accounting policies and procedures; (ii) to review the results of any audits of the books and records of the Partnership made by the Accounting Firm or other outside auditors; (iii) to review the allocation of overhead expenses in connection with the reimbursement of the expenses of the General Partner pursuant to Section 7.04; (iv) to review any resolutions of conflicts of interest made by the General Partner pursuant to Section 6.11(b); and (v) to review certain other determinations of the General Partner made pursuant to this Agreement.

(b) Unless otherwise expressly provided in this Agreement, (i) whenever a conflict of interest exists or arises between the General Partner or

any of its Affiliates, on the one hand, and the Partnership, AREP, or any Limited Partner, on the other hand, or (ii) whenever this Agreement or any other agreement contemplated herein provides that the General Partner shall act in a manner which is, or provide terms which are, fair and/or reasonable to the Partnership, AREP, or any Limited Partner, the General Partner shall resolve such conflict of interest, take such action or provide such terms considering, in each case, the relative interests of each party to such conflict, agreement,

transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles, and in the absence of bad faith by the General Partner, the resolution, action or terms so made, taken or provided by the General Partner shall not constitute a breach of this Agreement or any other agreement contemplated herein.

(c) The Audit Committee shall periodically review any determinations of the General Partner made pursuant to Section 6.11(b).

(d) Whenever in this Agreement the General Partner is permitted or required to make a decision (i) in its "sole discretion" or "discretion", with "absolute discretion" or under a grant of similar authority or latitude, the General Partner shall be entitled to consider only such interests and factors as it desires and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Partnership, AREP or the Limited Partners, or (ii) in its "good faith" or under another express standard, the General Partner shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein.

6.12 Liability of General Partner to Partnership and Limited Partners.

(a) The General Partner and its Affiliates and all partners, shareholders, directors, officers, employees or agents of the General Partner and its Affiliates shall not be liable (for monetary damages or otherwise) to the Partnership or to the Limited Partners for errors in judgment or for breach of fiduciary duty as the General Partner of the Partnership as a partner, shareholder, director, officer, employee or agent of the General Partner of the Partnership or any of its Affiliates, except for liability (i) for any breach of such Person's duty of loyalty to the Partnership, as such duty of loyalty may be set forth in or modified by this Agreement, (ii) for acts or omissions not in good faith or which involve intentional misconduct or knowing violation of law or (iii) for any transaction from which such Person has derived an improper benefit.

(b) The General Partner may exercise any of the powers granted to it by this Agreement and may perform any of the duties imposed upon it hereunder either directly or indirectly or by or through its agents, and the General Partner shall not be responsible for any misconduct or negligence on the part of any such agent appointed by the General Partner in good faith.

6.13 Indemnification of General Partner and Affiliates.

(a) The Partnership shall, to the fullest extent permitted by Law, indemnify and hold harmless the General Partner, its Affiliates, and all officers, directors, employees and agents of the General Partner and its Affiliates (individually, an "Indemnitee") from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise by reason of its status as (x) the General Partner or an Affiliate thereof or (y) a partner, shareholder, director, officer, employee or agent of the General Partner or an Affiliate thereof or (z) a Person serving at the request of the Partnership in another entity in a similar capacity, which relate to, arise out of or are incidental to the

Partnership, its property, business, affairs or the Exchange, including, without limitation, liabilities under the federal and state securities laws, regardless of whether the Indemnitee continues to be a General Partner, an Affiliate, or an officer, director, employee or agent of the General Partner or of an Affiliate thereof at the time any such liability or expense is paid or incurred, if (i) the Indemnitee acted in good faith and in a manner it believed to be in, or not opposed to, the best interests of the Partnership, and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful and (ii) the Indemnitee's conduct did not constitute willful misconduct. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to that specified in (i) or (ii) above.

(b) Expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding subject to this Section 6.13 shall, from time to time, be advanced by the Partnership prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking, by or on behalf of the Indemnitee to repay such amount unless it shall be determined that such Person is entitled to be indemnified as authorized in this Section 6.13.

(c) The indemnification provided by this Section 6.13 shall be in addition to any other rights to which those indemnified may be entitled under any agreement, vote of the Limited Partners, as a matter of law or equity, or otherwise, both as to

an action in the Indemnitee's capacity as a General Partner, an Affiliate or as an officer, director, employee or agent of a General Partner or an Affiliate, and as to an action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee.

(d) The Partnership may purchase and maintain insurance on behalf of the General Partner and such other Persons as the General Partner shall determine against any liability that may be asserted against or expense that may be incurred by such Person in connection with the Exchange and the activities of the Partnership, regardless of whether the Partnership would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) Except as set forth in the next sentence below, any indemnification hereunder shall be satisfied solely out of the assets of the Partnership. The Limited Partners shall not be subject to personal liability by reason of these indemnification provisions.

(f) An Indemnitee shall not be denied indemnification in whole or in part under this Section 6.13 by reason of the fact that the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(g) The provisions of this Section 6.13 are for the benefit of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Persons.

6.14 No Management by Limited Partners. No Limited Partner (other than the General Partner or any agent or employee of the General Partner, in its capacity as such, if such Person shall also be a Limited Partner) shall take part in the day-to-day management, operation or control of the business and affairs of the Partnership. The Limited Partners shall not have any right, power or authority to transact any business in the name of the Partnership or to act for or on behalf of or to bind the Partnership. The Limited Partners shall have no rights other than those specifically provided herein or granted by law where consistent with a valid provision hereof. In the event any laws, rules or regulations applicable to the Partnership, or to the sale or issuance of Units in connection with the Exchange, require a Limited Partner, or any group or class thereof, to have certain rights, options, privileges or consents not granted by the terms of this Agreement, then such Limited Partner shall have and enjoy such rights, options, privileges and consents so long as (but only so long as) the existence thereof does not

result in a loss of the limitation on liability enjoyed by the Limited Partners under the Delaware Act or the applicable laws of any other jurisdiction.

6.15 Other Matters Concerning General Partner.

(a) The General Partner may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisers selected by it and any opinion of any such Person as to matters that the General Partner reasonably believes to be within its professional or expert competence (including, without limitation, any opinion of legal counsel to the effect that the partnership would "more likely than not" prevail with respect to any matter) shall be full and complete authorization and protection in respect to any action taken or suffered or omitted by the General Partner hereunder in good faith and in accordance with such opinion.

(c) Anything in this Agreement to the contrary notwithstanding, the General Partner represents, covenants, warrants and agrees with the Limited Partners and the Partnership as follows:

(i) It shall not permit any Person who makes a nonrecourse loan to the Partnership to acquire, at any time as a result of making the loan, any direct or indirect interest in the profits, capital or property of the Partnership, other than as a secured creditor; and

(ii) It shall not provide any Limited Partner with any mandatory or discretionary right to purchase any type of security of the General Partner or of Affiliates thereof in connection with such Limited Partner's Partnership Interest.

(d) The General Partner shall have the right, in respect of any of its powers or obligations hereunder, to act through a duly appointed attorney or attorneys-in-fact. Each such attorney or attorney-in-fact shall, to the extent provided by the General Partner in the power of attorney, have full power and authority to do and perform, under the supervision of the General Partner, all and every act and duty which is permitted or required to be done by the General Partner hereunder. Each such

appointment shall be evidenced by a duly executed power of attorney giving and granting to each such attorney or attorney-in-fact full power and authority to do and perform all and every act and thing requisite and necessary to be done by the General Partner in connection with the Partnership.

ARTICLE VII

Compensation of General Partner; Payment of Partnership Expenses

7.01 Restrictions on Compensation and Expense Reimbursement. Except as otherwise provided in this Agreement, the Registration Statement or the AREP Partnership Agreement, neither the General Partner nor any Affiliate of the General Partner shall be entitled to receive any compensation, fees or expense reimbursements in connection with any services performed by the General Partner or any Affiliate of the General Partner.

7.02 Property Management Fees. The Partnership shall pay to an Affiliate of the General Partner, pursuant to the Property Management Agreement, Supervisory Management Fees and Property Management Fees in respect of supervisory management services and property management services performed by such Affiliate, as described in the Property Management Agreement and the Registration Statement.

7.03 Reinvestment Incentive Fee. In exchange for performance of certain acquisition and reinvestment services, the General Partner shall be entitled to receive from the Partnership an incentive fee equal to a percentage of the purchase price of New Properties. The percentage of such purchase price with respect to which such fee is calculated shall be one percent (1%) for the first five years and one-half of one percent (.5%) for the second five years after consummation of the Exchange. Although Reinvestment Incentive Fees will accrue each time New Properties are acquired, such fees will only be payable on an annual basis forty-five (45) days after the close of each fiscal year if the sum of (x) the sales price of all API Properties, not of associated debt, sold through the end of such year and (y) the appraisal value of all API Properties which have been financed or refinanced (and not subsequently sold), net of the amount of any refinanced debt, through the end of such year determined at the time of such financings or refinancings exceeds the aggregate values assigned to such API Properties for purposes of the Exchange. In the event these requirements are not met in any year, payment of Reinvestment Incentive Fees will be deferred. At the end of each year, a new determination will be made with respect to whether Reinvestment

Incentive Fees for that year and deferred fees from any prior year may be paid under the above criteria.

7.04 Reimbursement of Expenses of General Partner.

(a) The Partnership shall reimburse the General Partner for all expenses, disbursements and advances reasonably incurred by the General Partner in connection with the organization of the Partnership, the qualification of the Partnership and the General Partner to do business in any state in which the General Partner determines that such qualification is advisable, the registration of the Units under applicable federal and state securities laws in connection with the Exchange, the offering, sale and distribution of the Units pursuant to the Exchange and the listing of the Units on a National Securities Exchange.

(b) The Partnership shall reimburse the General Partner for all allocable direct and indirect overhead expenses, including, without limitation, salaries and rent, incurred by the General Partner in connection with its conduct of the business and affairs of the Partnership. Such allocations shall be subject to periodic review by the Audit Committee.

ARTICLE VIII

Bank Accounts; Books and Records; Fiscal Year; Reports; Tax Matters

8.01 Bank Accounts. All funds of the Partnership shall be deposited in its name in such checking and savings accounts, time deposits, certificates of deposit or other accounts at such banks or other financial institutions as shall be designated by the General Partner from time to time, and the General Partner shall arrange for the appropriate conduct of any such account or accounts. The General Partner shall not permit funds of the Partnership to be commingled with funds of the General Partner, any Affiliate of the General Partner, or any other Person; provided, however, that nothing herein shall preclude any investment of Partnership funds in a mutual fund or similar entity for which a separate account is maintained on behalf of each participant. The General Partner may use the funds of the Partnership as compensating balances for its benefit, provided that such funds do not directly or indirectly secure, and are not other wise at risk on account of, any indebtedness or other obligation of the General Partner or any director, officer, partner, employee or Affiliate thereof.

8.02 Books and Records.

(a) The General Partner shall keep, or cause to be kept, accurate, full, and complete books and accounts with respect to the Partnership, showing assets, liabilities, income, operations, transactions and the financial

condition of the Partnership. Such books and accounts shall be prepared and maintained on the accrual basis of accounting in accordance with generally accepted accounting principles. The General Partner shall maintain and preserve all Partnership books and records for such period as the General Partner, in its sole and absolute discretion, shall determine necessary or appropriate, subject to any requirements of state or federal law.

(b) Except for information kept confidential by the General Partner pursuant to Section 8.02(c), all books, records, reports and accounts of the Partnership shall be open to inspection by any Partner or duly authorized representatives of such Partner on reasonable notice at any reasonable time during business hours, for any purpose reasonably related to the Person's interest as a Partner, as the case may be, and such Person or its representatives at its expense shall have the further right to make copies or excerpts therefrom. Partners may request an accounting of Partnership affairs whenever circumstances render it just and reasonable, but the cost of furnishing of such information or conducting such accounting shall be at such Person's expense. None of the Partners or their representatives shall divulge to any other Person any confidential or proprietary data, information or property or any trade secrets of the Partnership. A copy of the list of names and addresses of all Partners shall be furnished to any Partner or their representatives upon request in person or by mail to the General Partner. The Person requesting such list shall pay the cost of copying the list and mailing before the list is delivered.

(c) Anything in this Section 8.02 to the contrary notwithstanding, the General Partner may keep confidential from the Limited Partners, and each Limited Partner's duly authorized representatives, for such period of time as the General Partner deems reasonable, any information that the General Partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or could damage the Partnership or its business or which the Partnership is required by law or by agreements with third parties to keep confidential.

8.03 Fiscal Year. The Fiscal Year of the Partnership for financial and federal, state, and local income tax purposes initially shall be the calendar year. The General Partner shall

have authority to change the beginning and ending dates of the Fiscal Year if the General Partner, in its sole and absolute discretion, subject to approval by the Internal Revenue Service, shall determine such change to be necessary or appropriate to the business of the Partnership, and shall give written notice of any such change to the Limited Partners within thirty (30) days after the occurrence thereof.

8.04 Reports. The General Partner shall use its best efforts to prepare and furnish to the Limited Partners reports, financial and tax statements sufficient to enable the Limited Partners to meet their obligations to their partners and as signees, if any. The Limited Partners agree to furnish the General Partner with such information as may be necessary or helpful in preparing the tax returns or other filings of the Partnership.

8.05 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the General Partner.

8.06 Where Maintained. The books, accounts and records of the Partnership at all times shall be maintained at the Partnership's principal office or, at the option of the General Partner, at the principal place of business of the General Partner.

8.07 Preparation of Tax Returns. The General Partner, at the expense of the Partnership, shall arrange for the preparation and timely filing of all returns of the Partnership showing all income, gains, deductions, and losses necessary for federal and state income tax purposes. The classification, realization and recognition of income, gains, losses and deductions and other items of the Partnership shall be on the accrual method of accounting for federal income tax purposes.

8.08 Tax Elections. Except as otherwise specifically provided

herein, the General Partner shall, in its sole and absolute discretion, determine whether to make any available income tax election. The General Partner shall cause the Partnership to make the Section 754 Election in accordance with applicable regulations thereunder. The General Partner shall have the right to seek to revoke any such election upon the General Partner's determination that such revocation is in the interests of the Limited Partners; provided, however, that the General Partner shall not seek to revoke any such election unless the General Partner has received an opinion of counsel for the Partnership to the effect that such revocation would not cause (a) the loss of limited liability of the Limited Partners under this

Agreement and (b) the Partnership to be treated as an association taxable as a corporation for federal income tax purposes.

8.09 Tax Controversies. Subject to the provisions hereof, the General Partner is designated as the "tax matters partner" (as defined in Section 6231 of the Code) of the Partnership and is authorized and required to represent the Partnership (at the expense of the Partnership) in connection with all examinations of the affairs of the Partnership, by any federal, state or local tax authorities, including any resulting administrative and judicial proceedings, and to expend funds of the Partnership for professional services and costs associated therewith. Each Limited Partner agrees to cooperate with the General Partner and to do or refrain from doing any or all things reasonably required by the General Partner in connection with the conduct of all such proceedings.

8.10 Taxation as a Partnership. No election shall be made by the Partnership, the General Partner or any Limited Partner to be excluded from the application of any of the provisions of Subchapter K, Chapter I of Subtitle A of the Code or from any similar provisions of any state tax laws.

8.11 FIRPTA Withholding.

(a) Notwithstanding any other provision of this Agreement, the General Partner is authorized to take any action that it determines to be necessary or appropriate to cause the Partnership to comply with any withholding requirements established under Sections 1445 and 1446 of the Code with regard to (i) the sale of "United States real property interests" (as defined in the Code) or (ii) the distribution of cash or property to the General Partner or any Limited Partner who is a "foreign person" (as defined in Treasury Regulation Section 1.1445-2T(b)(2)(i)(c)).

(b) In its sole and absolute discretion and as provided for in Treasury Regulations under Sections 1445 and 1446 of the Code, the General Partner may elect to withhold a portion of any distributions made to the General Partner and any Limited Partner who are "foreign persons" or who fail to provide to the Partnership and appropriate certificate in accordance with the applicable provisions of such Treasury Regulations.

8.12 Loss of Partnership Status. In the event that the General Partner at any time shall determine that the Partnership does not qualify, or no longer will qualify, as a partnership for federal income tax purposes, then the General Partner shall have the right, but not the obligation, without the consent of the Limited Partners, to take any such action as it, in its sole and absolute discretion, determines to be in the interests of

the Limited Partners in connection therewith or as a result thereof, including, without limitation to cause the Partnership to be reorganized so as to qualify as a "real estate investment trust" within the meaning of Section 856 of the Code.

8.13 Opinions Regarding Taxation. Notwithstanding any other provision of this Agreement, the requirement, as a condition to any action proposed to be taken under this Agreement, that the Partnership be furnished an opinion of counsel for the Partnership to the effect that the proposed transaction would not result in the Partnership being treated as an association taxable as a corporation for federal income tax purposes, shall not be

applicable if the Partnership is at such time treated in all material respects as an association taxable as a corporation for federal income tax purposes.

ARTICLE IX

Transfer of Interests; Admission of Partners

9.01 Transfer.

(a) The term "transfer," when used in this Article IX with respect to a Partnership Interest, shall be deemed to include any sale, assignment, gift, pledge, encumbrance, hypothecation, mortgage, exchange or other disposition.

(b) No Partnership Interest shall be transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article IX. Any transfer or purported transfer of any Partnership Interest not made in accordance with this Article IX shall be null and void.

9.02 Transfer of Partnership Interest of General Partner.

(a) Prior to the tenth anniversary of the Closing Date, the General Partner is prohibited from transferring its Partnership Interest as a General Partner to any Person other than an Affiliate of the General Partner. If, after the tenth anniversary of the Closing Date, the General Partner desires to sell or transfer all or any portion of the General Partner's Partnership Interest as a General Partner to a Person who is not a General Partner, such transfer shall be permitted if (and only if):

(i) a Majority Interest consents to the transfer and to the admission of the transferee as a general partner of the Partnership, unless the transferee is an Affiliate of the transferring General Partner, in which case no such consent of the Limited Partners shall be required unless provided for in the Delaware Act;

(ii) the transferee consents to be bound by this Agreement and has the necessary legal authority to act as a general partner of a partnership; and

(iii) the Partnership receives an opinion of counsel that such transfer and admission (A) would not cause the loss of limited liability of the Limited Partners under this Agreement and (B) would not cause the Partnership to be treated as an association taxable as a corporation for federal income tax purposes.

(b) Neither Section 9.01(a) nor any other provision of this Agreement shall be construed to prevent (and each Partner, by requesting and being granted admission to the Partnership, is deemed to consent to):

(i) the transfer by any corporate General Partner of such corporate General Partner's Partnership Interest as a General Partner upon its merger or consolidation with another Person or the transfer by it of all or substantially all of its assets to another Person, provided such Person (A) has a net worth not less than that of the General Partner, (B) accepts and agrees to be bound by the terms and conditions of this Agreement and (C) furnishes to the Partnership an opinion of counsel to the effect that such merger, consolidation, transfer or assumption (1) would not cause the loss of limited liability of the Limited Partners under this Agreement and (2) would not cause the Partnership or AREP to be treated as an association taxable as a corporation for federal income tax purposes;

(ii) the transfer by the General Partner of all or any part of its interest in items of Partnership income, gains, losses, deduction, credits, distributions or surplus; or

(iii) the General Partner's mortgaging, pledging, hypothecating or granting a security interest in all or any part of its Partnership Interest as a General Partner as collateral for a loan or loans.

9.03 Transfer of Partnership Interest of Limited Partners. A Limited Partner may not transfer all or any part of its Partnership Interest without the express written consent of the General Partner, which may be given or withheld in its sole and absolute discretion, except that (i) a transfer of Partnership Interests to AREP by the API Investors admitted to the Partnership as Limited Partners pursuant to Section 9.05 is hereby approved and (ii) a successor of AREP may, in accordance with

the AREP Partnership Agreement, succeed to AREP's Partnership Interest as a Limited Partner in the Partnership.

9.04 Admission of Successor General Partner. A successor General Partner selected pursuant to Sections 10.01 or 10.02 or the transferee of all or any portion of the Partnership Interest of a General Partner pursuant to Section 9.02 shall be admitted to the Partnership as a General Partner (in the place, in whole or in part, of the transferor or former General Partner), effective as of the date that an amendment of the Certificate of Limited Partnership, adding the name of such, successor General Partner and other required information, is filed pursuant to Section 2.01 (which date, in the event the successor General Partner is in the place in whole of the transferor or former General Partner, shall be contemporaneous with the withdrawal of such transferor or former General Partner), and upon receipt by the transferor or former General Partner of all of the following:

(a) the successor General Partner's acceptance of, and agreement to be bound by, all of the terms and provisions of this Agreement, in form and substance satisfactory to the transferor or former General Partner;

(b) evidence of the authority of such successor General Partner to become a General Partner and to be bound by all of the terms and conditions of this Agreement;

(c) the written agreement of the successor General Partner to continue the business of the Partnership in accordance with the terms and provisions of this Agreement; and

(d) such other documents or instruments as may be required in order to effect the admission of the successor General Partner as the General Partner under this Agreement.

9.05 Initial Admission of Limited Partners. On the Closing Date, the General Partner shall admit to the Partnership as Limited Partners all those API Investors in API Partnerships that participate in the Exchange and to which Partnership Interests are issued in accordance with Section 4.03 hereof. It is hereby acknowledged that immediately thereafter and pursuant to the Merger Agreements, all such API Investors shall contribute to AREP all such Partnership Interests in return for the issuance of Units to such API Investors, and the General Partner shall admit AREP to the Partnership as a Limited Partner.

9.06 Admission of Successor or Additional Limited Partners. The successor of a Limited Partner or a Person who makes a Capital Contribution to the Partnership shall be admitted to the Partnership as a Limited Partner upon furnishing to the General Partner (a) acceptance, in form satisfactory to the General Partner, of all the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Article XIII, and (b) such other documents or instruments as may be required to effect its admission as a Limited Partner, and such admission shall become effective on the date that the General Partner determines, in its sole and absolute discretion, that such conditions have been satisfied.

ARTICLE X

Withdrawal or Removal of General Partner

10.01 Withdrawal of General Partner.

(a) The General Partner shall not withdraw as the general partner in the Partnership and transfer its Partnership Interest to any Person other than its Affiliate until after the tenth anniversary of the Closing Date. Thereafter, the General Partner shall not withdraw as the General Partner in the Partnership for the remainder of the term of the Partnership unless (i) the General Partner shall have transferred all of its Partnership Interest as a General Partner in accordance with Section 9.02 and (ii) a Majority Interest shall have consented to such transfer and to the admission of the transferee as General Partner of the Partnership.

(b) After the tenth anniversary of the Closing Date and upon the occurrence of any one of the conditions set forth in Section 10.01(a) above, the General Partner may withdraw from the Partnership effective on at least thirty (30) days' advance written notice to the Limited Partners, such withdrawal to take effect on the date specified in such notice. The General Partner shall have no liability to the Partnership or the Limited Partners on account of any withdrawal in accordance with the terms of this Section 10.01. If the General Partner shall give a notice of withdrawal pursuant to this Section 10.01, then the Limited Partners may elect a successor General Partner, who shall be admitted as a successor General Partner pursuant to Section 9.04. If no successor General Partner shall be elected in accordance with this Section 10.01 and there shall be no remaining General Partner, then the Partnership shall be dissolved pursuant to Article XI.

10.02 Removal of General Partner. The General Partner shall automatically be removed as General Partner if, and only if,

it withdraws from, or is removed as the general partner, of AREP. Such removal shall be effective at the same time as is the General Partner's withdrawal or removal as general partner of AREP. AREP agrees that the selection of a successor general partner of AREP shall constitute selection by AREP of such successor as the successor General Partner of the Partnership. If no successor General Partner is selected, the Partnership shall be dissolved pursuant to Section 11.02.

10.03 Amendment of Agreement and Certificate of Limited Partnership. This Agreement and the Certificate of Limited Partnership shall be amended to reflect the withdrawal, removal or succession of a General Partner.

10.04 Interests of Departing General Partner and Successor.

(a) Upon the withdrawal or removal of a General Partner, such departing General Partner shall, at its option exercisable prior to the effective date of its departure, promptly receive from its successor (if any) in exchange for its Partnership Interest as a General Partner, an amount in cash equal to the fair market value of such departing General Partner's Partnership Interest as a General Partner in both the Partnership and AREP, as determined as of the effective date of its departure. If the departing General Partner exercises its option to have its Partnership Interest as a General Partner acquired by its successor, such successor must also acquire at such time the interests of the departing General Partner as a general partner in AREP, for an amount in cash equal to the fair market value of such interest, as determined as of the effective date of its departure. If the option is exercised, the departing General Partner shall, as of the effective date of its departure, cease to share in allocations and distributions with respect to its Partnership Interest as a General Partner.

(b) Upon the withdrawal or removal of the General Partner pursuant to Section 10.01 or 10.02, respectively, if the business of the Partnership is continued pursuant to Section 11.03 hereof, and if a departing General Partner shall not exercise the option described in Section 10.04(a), such departing General Partner shall become a Record Holder in AREP and its interests as a General Partner in both the Partnership and AREP shall be converted into the number of Units determined by dividing (i) the fair market value of such departing General Partner's Partnership Interest as a General Partner in both the Partnership and AREP, determined as set forth in Section 10.04(c) as of the effective date of its departure, by (ii) the average closing Unit Price for the twenty (20) trading days immediately pre-

ceding the effective date of the departure of such departing General Partner.

(c) For purposes of this Section 10.04, the "fair-market value" of such General Partner's Partnership Interest as a General Partner in both the Partnership and AREP shall be the amount that would be distributed to such General Partner pursuant to Section 5.03 of both this Agreement and the AREP Partnership Agreement if the Partnership Assets and the assets of AREP were sold for cash in an orderly liquidation of the Partnership Assets commencing on the effective date of such General Partner's departure, with such liquidation being effected through arm's-length sales between informed and willing purchasers under no compulsion to buy and informed and willing sellers under no compulsion to sell, with the proceeds from such hypothetical sales to be discounted (at a rate equal to the interest rate on U.S. Treasury obligations with a term of one (1) year issued on the date nearest the effective date of such General Partner's departure) to the effective date of such General Partner's departure to reflect the time period reasonably anticipated to be necessary to consummate such sales, as such "fair market value" is agreed upon by such General Partner and its successor within thirty (30) days after the effective date of such General Partner's departure or, in the absence of such an agreement, as determined by an independent investment banking firm or other independent expert selected by such General Partner and its successor, which, in turn, may rely on other experts and the determination of which shall be conclusive as to such matter. If such parties cannot agree upon one independent investment banking firm or other independent expert within 45 days after the effective date of such departure, then such firm shall be designated by the independent investment banking firm or other independent expert selected by each of such General Partner and its successor. In making its determination, such independent investment banking firm or other independent expert shall consider the Unit Price, the value of the Partnership Assets and the assets of AREP, the rights and obligations of such General Partner and other factors it may deem relevant.

(d) If a departing General Partner shall not exercise the option prided for in Section 10.04(a), the successor General Partner shall, at the effective date of its admission to the Partnership as a General Partner, contribute to the capital of the Partnership cash in an amount equal to 1/99th of the product of (i) the number of Units outstanding immediately prior to the effective date of such successor General Partner's admission (but after giving effect to the conversion described in Section 10.04(b)) and (ii) the average closing Unit Price for the twenty (20) trading days immediately preceding the effective date of such successor General Partner's admission. Thereafter, such

successor General Partner shall, notwithstanding any other provision of this Agreement, be entitled to one percent (1%) of all Partnership allocations and distributions.

(e) If, at the time of the General Partner's departure, the Partnership is indebted to the General Partner under this Agreement or any other instrument or agreement for funds advanced, properties sold, services rendered or costs and expenses incurred by the General Partner, the Partnership shall, in the case of the General Partner's withdrawal pursuant to Section 10.01, deliver to the General Partner a three-year fully-amortizing promissory note in the original principal amount of the full amount of such indebtedness and bearing interest at an annual rate equal to the Prime Rate announced by Citibank, N.A. from time to time plus one (1) percent, and in the case of the General Partner's removal pursuant to Section 10.02, pay to the General Partner in cash or by check, within sixty (60) days after the effective date of the General Partner's removal, the full amount of such indebtedness. The successor to the General Partner shall assume all obligations theretofore incurred by the General Partner, as General Partner of the Partnership, and the Partnership and such successor shall take all such actions as shall be necessary to terminate any guarantees of the General Partner, and any of its Affiliates, of any obligations of the Partnership. If, for whatever reason, the creditors of the Partnership shall not consent to such termination of any such guarantees, the successor to the General Partner and the Partnership shall be required to indemnify the General Partner for any liabilities and expenses incurred by the departing General Partner on account of such guarantees.

ARTICLE XI

Dissolution and Liquidation

11.01 No Dissolution. The Partnership shall not be dissolved by the admission of successor or additional Limited Partners or by the admission of successor or additional General Partners in accordance with the terms of this Agreement.

11.02 Events Causing Dissolution. The Partnership shall be dissolved and its affairs wound up upon the occurrence of the earliest to occur of any of the following events:

(a) the expiration of the term of the Partnership, as provided in Section 2.05;

(b) the withdrawal, bankruptcy or dissolution of the General Partner or the occurrence of any other event that results in the General Partner ceasing to be the General

Partner (other than by reason of a transfer pursuant to Section 9.02 or withdrawal occurring upon or after, or a removal effective upon or after, selection of a successor pursuant to Sections 10.01 or 10.02, as the case may be);

(c) the dissolution of AREP or any successor and the final liquidation of its assets;

(d) the sale or other disposition of all or substantially all of the Partnership Assets, upon the election of the General Partner and the approval of a Majority Interest;

(e) the election by a Majority Interest, with the approval of the General Partner, to terminate, liquidate and dissolve the Partnership;

(f) the Partnership's insolvency or bankruptcy; or

(g) the occurrence of any other event that, under the Delaware Act, would cause the dissolution of the Partnership or that would make it unlawful for the business of the Partnership to be continued.

For purposes of this Section 11.02, bankruptcy of the Partnership or the General Partner shall be deemed to have occurred when (i) such Person commences a voluntary proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) a final and nonappealable order for relief is entered against it under the Federal bankruptcy laws as now or hereafter in effect or (iii) it executes and delivers a general assignment for the benefit of its creditors.

11.03 Right to Continue Business of Partnership. Upon an event described in Section 11.02(b), the Partnership thereafter shall be dissolved and liquidated unless, within ninety (90) days after the event described in such Section, an election to reconstitute and continue the business of the Partnership shall be made in writing by the Limited Partners and a successor General Partner is selected by a Majority Interest. If such an election to continue the Partnership is made and a successor General Partner selected, then:

(i) the Partnership shall continue until the Termination Date unless earlier dissolved in accordance with this Article XI;

(ii) the Partnership Interest of the former General Partner shall be either (A) purchased by the successor

General Partner or (B) converted into Units in the manners provided in Section 10.04 as if the former General Partner were a departing General Partner under Section 10.04; and

(iii) all necessary steps shall be taken to amend this

Agreement and the Certificate of Limited Partnership to reflect the reconstitution and continuation of the business of the Partnership.

11.04 Dissolution. Except as otherwise provided in Section 11.03, upon the dissolution of the Partnership, the Certificate of Limited Partnership shall be cancelled in accordance with the provisions of the Delaware Act, and the General Partner (or, if the dissolution is caused by the withdrawal, bankruptcy, dissolution or removal of the General Partner, then the Person designated as Liquidating Trustee in Section 11.05 hereof) promptly shall notify the Limited Partners of such dissolution.

11.05 Liquidation. Upon dissolution of the Partnership, unless an election to continue the business of the Partnership is made pursuant to Section 11.03, the General Partner, or, in the event the dissolution is caused by an event described in Section 11.02(b), a Person or Persons selected by a Majority Interest shall be the Liquidating Trustee. The Liquidating Trustee shall proceed without any unnecessary delay to sell or otherwise liquidate the Partnership Assets and shall apply and distribute the proceeds of such sale or liquidation in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

(a) to pay (or to make provision for the payment of) all creditors of the Partnership, other than Partners, in the order of priority provided by law;

(b) to pay, on a pro rata basis, all creditors of the Partnership that are Partners; and

(c) after the payment (or the provision for payment) of all debts, liabilities, and obligations of the Partnership, to the Partners in accordance with Section 5.03(c).

The Liquidating Trustee, if other than the General Partner, shall be entitled to receive such compensation for its services as Liquidating Trustee as may be approved by the Limited Partners. The Liquidating Trustee shall agree not to resign at any time without sixty (60) days prior written notice and, if other than the General Partner, may be removed at any time, with or without cause, by written notice of removal approved by the Limited Partners. Upon dissolution, removal or resignation of the Liquidating Trustee, a successor and substitute Liquidating

Trustee (who shall have and succeed to all rights, powers and duties of the original Liquidating Trustee) shall be selected within ninety (90) days thereafter by the Limited Partners. The right to appoint a successor or substitute Liquidating Trustee in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidating Trustee are authorized to continue under the provisions hereof, and every reference herein to the Liquidating Trustee will be deemed to refer also to any such successor or substitute Liquidating Trustee appointed in the manner herein provided. Except as expressly provided in this Article XI, the Liquidating Trustee appointed in the manner provided herein shall have and may exercise, without further authorization or consent of any of the parties hereto, all of the powers conferred upon the General Partner under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidating Trustee to carry out the duties and functions of the Liquidating Trustee hereunder (including the establishment of reserves for liabilities that are contingent or uncertain in amount) for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidating Trustee to complete the winding up and liquidation of the Partnership as provided for herein. In the event that no Person is selected to be the Liquidating Trustee as herein provided within one hundred twenty (120) days following the event of dissolution, or in the event the Limited Partners fail to select a successor or substitute Liquidating Trustee within the time periods set forth above, any Partner may make application to a Court of Chancery of the State of Delaware to wind up the affairs of the Partnership and, if deemed appropriate, to appoint a Liquidating Trustee.

11.06 Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Partnership and the liquidation of its assets pursuant to Section 11.05 in order

to minimize any losses otherwise attendant upon such a winding up.

11.07 Termination of Partnership. Except as otherwise provided in this Agreement, the Partnership shall terminate when all of the assets of the Partnership shall have been converted into cash, the net proceeds therefrom, as well as any other liquid assets of the Partnership, after payment of or due provision for all debts, liabilities and obligations of the Partnership, shall have been distributed to the Partners as provided for in Section 5.03 and 11.05, and the Certificate of Limited Partnership shall have been cancelled in the manner required by the Delaware Act.

ARTICLE XII

APPROVALS BY LIMITED PARTNERS; AMENDMENTS

12.01 Approvals by Limited Partners. (a) Subject to Section 12.02, the General Partner shall not, without the affirmative vote or approval of a Majority Interest (except for certain amendments to this Agreement pursuant to Section 12.05, which require either unanimous or the consent of at least 95% of the Limited Partners):

(i) amend this Agreement, including amending the term of the Partnership, except as permitted under Section 12.04;

(ii) dissolve the Partnership pursuant to Sections 11.02(d) or (e);

(iii) select a Liquidating Trustee pursuant to Section 11.05;

(iv) except upon dissolution and liquidation of the Partnership pursuant to Article XI, cause the Partnership to sell, exchange, assign, lease, sublease of otherwise dispose of all or substantially all of the Partnership Assets; provided, however, that this provision shall not be interpreted to preclude or limit the mortgage, pledge, hypothecation or grant of a security interest in all or substantially all of the Partnership Assets, and shall not apply to any forced sale of any or all of the Partnership Assets pursuant to the foreclosure of, or other realization upon, any such encumbrance;

(v) cause the Partnership to merge, consolidate or combine with any other Person; provided, however, that no vote or approval of the Limited Partners shall be required with respect to any such transaction which, in the sole and absolute discretion of the General Partner, (A) is primarily for the purpose of acquiring properties or assets, (B) combines the ongoing business operations of the entities with the Partnership as the surviving entity, or (C) is between the Partnership and AREP;

(vi) transfer its Partnership Interest as a General Partner to a Person who is not a General Partner, other than pursuant to Section 9.02; or

(vii) elect to reconstitute and continue the business of the Partnership upon an event causing the dissolution and liquidation of the Partnership under Section 11.02.

(b) Except as expressly provided in this Agreement, the Limited Partners shall have no voting or approval rights.

12.02 Approval Rights Conditioned. The approval rights of the Limited Partners set forth in Section 12.01 shall not be exercised until such time as the Partnership shall have received an opinion of counsel for the Partnership to the effect that the exercise of such rights by the Limited Partners would not cause (i) the loss of limited liability of the Limited Partners under this Agreement (ii) the loss of limited liability of the Record Holders under the AREP Partnership Agreement and (iii) the Partnership or AREP

to be treated as an association taxable as a corporation for federal income tax purposes. If counsel for the Partnership has indicated that it is unable or unwilling to deliver such an opinion of counsel, the General Partner may take any action described in Section 12.01(a) without the need for any approval by the Limited Partners.

12.03 Amendments. An amendment to this Agreement shall be effective only if approved by the General Partner in writing and by a Majority Interest, except for certain amendments to this Agreement (a) which, pursuant to Section 12.04, may be adopted without the consent or approval of the Limited Partners and (b) which, pursuant to Section 12.05, require either unanimous or the consent of 95% of the Limited Partners.

12.04 Amendments to be Adopted Solely by the General Partner. The General Partner (pursuant to the General Partner's powers of attorney from the Limited Partners described in Article XIII), without the consent or approval at the time of any Limited Partner (each Limited Partner, by acquiring an interest in the Partnership and requesting admission to the Partnership, being deemed to consent to any such amendment), may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record all documents required or desirable in connection therewith, to reflect:

(a) a change in the name of the Partnership or the location of the principal place of business of the Partnership;

(b) the admission, substitution, termination or withdrawal of Partners in accordance with this Agreement;

(c) an election to be bound by any successor statute to the Delaware Act governing limited partnerships pursuant to the power granted in Section 6.05.

(d) a change that is necessary to qualify the Partnership as a limited partnership or a partnership in which

the Limited Partners have limited liability under the laws of any state or that is necessary or advisable in the opinion of the General Partner to ensure that the Partnership will not be treated as an association taxable as a corporation for federal income tax purposes;

(e) a change that is necessary to reorganize the Partnership so as to qualify as a "real estate investment trust" within the meaning of Section 856 of the Code;

(f) a change that is (i) of an inconsequential nature and does not adversely affect the Limited Partners in any material respect; (ii) necessary or desirable to cure any ambiguity, to correct or supplement any provision herein that would be inconsistent with law or any other provision herein or to make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with law or the provisions of this Agreement; (iii) necessary or desirable to satisfy any federal or state agency or contained in any federal or state statute, (iv) necessary or desirable to facilitate the trading of the securities of AREP or comply with any rule, regulation, guideline or requirement of any National Securities Exchange on which the securities of AREP are or will be listed for trading, compliance with any of which the General Partner deems to be in the interests of the Partnership and the Limited Partners; (v) necessary or desirable in connection with any action permitted to be taken by the General Partner under Section 8.12 hereof; or (vi) required or contemplated by this Agreement;

(g) a change in any provision of this Agreement which requires any action to be taken by or on behalf of the General Partner or the Partnership pursuant to the requirements of applicable Delaware law if the provisions of applicable Delaware law are amended, modified or revoked so that the taking of such action is no longer required; or

(h) any other amendments similar to the foregoing.

The authority set forth in Section 12.04(f) shall specifically include

the authority to make such amendments to this Agreement and to the Certificate of Limited Partnership as the General Partner deems necessary or desirable in the event the Delaware Act is amended to eliminate or change any provision now in effect.

12.05 Amendment Restrictions. Notwithstanding the provisions of Section 12.04, (a) no amendment to this Agreement shall be permitted without the unanimous vote or approval of the

Limited Partners if such amendment, in the opinion of counsel for the Partnership, (i) would cause the loss of limited liability of the Limited Partners under this Agreement or (ii) would cause the Partnership or AREP to be treated as an association taxable as a corporation for federal income tax purposes and (b) no amendment to this Agreement shall be permitted which would (i) enlarge the obligations of the General Partner or any Limited Partner or convert the interest of any Limited Partner into the interest of a general partner; (ii) modify the fees and compensation payable to the General Partner and its Affiliates pursuant to Article VII of this Agreement without the consent of the General Partner; (iii) modify the order and method for allocations of income and loss or distributions pursuant to Article V of this Agreement without the consent of the General Partner or the Limited Partners adversely affected; or (iv) amend Sections 12.03, 12.04 or 12.05 of this Agreement without the consent of the General Partner and without the consent of Limited Partners who are Limited Partners with respect to at least ninety-five percent (95%) of the total number of all outstanding Partnership Interests held by Limited Partners.

ARTICLE XIII

Power of Attorney

Each Limited Partner is deemed to irrevocably constitute, appoint and empower the General Partner (and any successor by merger, transfer, election or otherwise), and each of the General Partner's authorized officers and attorneys-in-fact, with full power of substitution, as the true and lawful agent and attorney-in-fact of such Limited Partner, with full power and authority in such Limited Partner's name, place and stead and for such Limited Partner's use or benefit to make, execute, verify, consent to, swear to, acknowledge, make oath as to, publish, deliver, file and/or record in the appropriate public offices, (i) all certificates and other instruments, including, at the option of the General Partner, this Agreement and the Certificate of Limited Partnership and all amendments and restatements thereof, that the General Partner deems appropriate or necessary to qualify, or continue the qualification of, the Partnership as a limited partnership (or a partnership in which the Limited Partners have limited liability) in the State of Delaware and all jurisdictions in which the Partnership may or may intend to conduct business or own property; (ii) all other certificates, instruments and documents as may be requested by, or may be appropriate under the laws of any state or other jurisdiction in which the Partnership may or may intend to conduct business or own property; (iii) all instruments that the General Partner deems appropriate or necessary to reflect any amendment, change or modification of this Agreement in accordance

with the terms hereof; (iv) all conveyances and other instruments or documents that the General Partner deems appropriate or necessary to effectuate or reflect the dissolution, termination and liquidation of the Partnership pursuant to the terms of this Agreement; (v) any and all financing statements, continuation statements, mortgages or other documents necessary to grant to or perfect for secured creditors of the Partnership, including the General Partner and Affiliates, a security interest, mortgage, pledge or lien on all or any of the Partnership Assets; (vi) all instruments or papers required to continue the business of the Partnership pursuant to Article XI; (vii) all instruments (including this Agreement and the Certificate of Limited Partnership and amendments and restatements thereof) relating to the admission of any Partner pursuant to Article IX; and (viii) all other instruments as the attorneys-in-fact or any one of them may deem necessary or advisable to carry out fully the provisions of this Agreement in accordance with its terms; and

Nothing herein contained shall be construed as authorizing any Person acting as attorney-in-fact pursuant to this Article XIII to take action as an attorney-in-fact for any Limited Partner to increase in any way the liability of such Limited Partner beyond the liability expressly set forth in this Agreement, or to amend this Agreement except in accordance with Article XII.

The appointment by each Limited Partner of the Persons designated in this Article XIII as attorneys-in-fact shall be deemed to be a power of attorney coupled with an interest in recognition of the fact that each of the Limited Partners under this Agreement will be relying upon the power of such Persons to act pursuant to this power of attorney for the orderly administration of the affairs of the Partnership. The foregoing power of attorney is hereby declared to be irrevocable, and it shall survive, and shall not be affected by, the subsequent death, incompetency, dissolution, disability, incapacity, bankruptcy or termination of any Limited Partner and it shall extend to such Limited Partner's heirs, successors and assigns. Each Limited Partner hereby agrees to be bound by any representations made by any Person acting as attorney-in-fact pursuant to this power of attorney in accordance with this Agreement. Each Limited Partner hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of any Person taken as attorney-in-fact under this power of attorney in accordance with this Agreement. Each Limited Partner shall execute and deliver to the General Partner, within fifteen (15) days after receipt of the General Partner's request therefor, all such further designations, powers of attorney and other instruments as the General Partner deems necessary to effectuate this Agreement and the purposes of the Partnership.

ARTICLE XIV

Miscellaneous Provisions

14.01 Additional Actions and Documents. Each of the Partners hereby agrees to take or cause to be taken such further actions, to execute, acknowledge, deliver, and file or cause to be executed, acknowledged, delivered and filed such further documents and instruments, and to use his best efforts to obtain such consents, as may be necessary or as may, be reasonably requested in order to fully effectuate the purposes, terms and conditions of this Agreement, whether before, at, or after the closing of the transactions contemplated by this Agreement.

14.02 Notices. All notices, demands, requests, or other communications which may be or are required to be given, served, or sent by a Partner or the Partnership pursuant to this Agreement shall be in writing and shall be personally delivered, mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, or transmitted by telegram or telex, addressed as follows:

(a) If to the General Partner:

American Property Investors, Inc.
666 Third Avenue
New York, New York 10017
Attention: Richard H. Ader

(b) If to a Limited Partner:

The Last Known Business, Residence
or Mailing Address of Such Limited
Partner Reflected in the Records of
the Partnership

(c) If to the Partnership:

American Real Estate Holdings
Limited Partnership
666 Third Avenue
New York, New York 10017

The General Partner, the Organizational Limited Partner and the Partnership may designate by notice in writing a new address to which any notice, demand,

request or communication may thereafter be so given, served or sent. Each notice, demand, request, or communication which shall be delivered, mailed or transmitted in the manner described above shall be deemed sufficiently given, served, sent or received for all purposes at such time as

it is delivered to the addressee (with an affidavit of personal delivery, the return receipt, the delivery receipt, or (with respect to a telex) the answerback being deemed conclusive (but not exclusive) evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation.

14.03 Severability. The invalidity of any one or more provisions hereof or of any other agreement or instrument given pursuant to or in connection with this Agreement shall not affect the remaining portions of this Agreement or any such other agreement or instrument or any part thereof, all of which are inserted conditionally on their being held valid in law; and in the event that one or more of the provisions contained herein or therein should be invalid, or should operate to render this Agreement or any such other agreement or instrument invalid, this Agreement and such other agreements and instruments shall be construed as if such invalid provisions had not been inserted.

14.04 Survival. It is the express intention and agreement of the Partners that all covenants, agreements, statements, representations, warranties and indemnities made in this Agreement shall survive the execution and delivery of this Agreement.

14.05 Waivers. Neither the waiver by a Partner of a breach or of a default under any of the provisions of this Agreement, nor the failure of a Partner, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right, remedy, or privilege hereunder shall be construed as a waiver of any subsequent breach or default of a similar nature, or a waiver of any such provisions, rights, remedies, or privileges hereunder.

14.06 Exercise of Rights. No failure or delay on the part of a Partner or the Partnership in exercising any right, power, or privilege hereunder and no course of dealing between the Partners or between the Partners and the Partnership shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any other or further exercise thereof or the' exercise of any other right, power, or privilege. The rights and remedies herein expressly provided are cumulative and not exclusive of any other rights or remedies which a Partner or the Partnership would otherwise have at law or in equity or otherwise.

14.07 Binding Effect. Subject to any provisions hereof restricting assignment, this Agreement shall be binding upon and shall inure to the benefit of the Partners and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

14.08 Limitation on Benefits of this Agreement. It is the explicit intention of the Partners that no person or entity other than the Partners and the Partnership is or shall be entitled to bring any action to enforce any provision of this Agreement against any Partners or the Partnership, and that except as set forth in this Agreement, the covenants, undertakings, and agreements set forth in this Agreement shall be solely for the benefit of, and shall be enforceable only by, the Partners (or their respective successors and assigns as permitted hereunder) and the Partnership.

14.09 Force Majeure. If the General Partner is rendered unable, wholly or in part, by "force majeure" (as herein defined) to carry out any of its obligations under this Agreement, other than the obligation hereunder to make money payments, the obligations of the General Partner, insofar as they are affected by such force majeure, shall be suspended during but no longer than the continuance of such force majeure. The term "force majeure" as used herein shall mean an act of God, strike, lockout or other industrial disturbance, act of public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion, governmental restraint, unavailability of equipment and any other cause, whether of the kind specifically enumerated above or otherwise, which is

not reasonably within the control of the General Partner.

14.10 Entire Agreement. This Agreement contains the entire agreement among the Partners with respect to the transactions contemplated herein, and supersedes all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein and therein.

14.11 Pronouns. All pronouns and any variation thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or entity may require.

14.12 Headings. Article, section and subsection headings contained in this Agreement are inserted for convenience of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions hereof.

14.13 Governing Law. This Agreement, the rights and obligations of the parties hereto, and any claims or disputes relating thereto, shall be governed by and construed in accordance with the Delaware Act and all other laws of Delaware (but not including the choice of law rules thereof).

14.14 Execution in Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required; and it shall not be necessary that the signatures of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; but it shall be sufficient that the signature of or on behalf of, each party, or that the signatures of the person required to bind any party, appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of, or on behalf of, all of the parties hereto.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement, or have caused this Agreement to be duly executed on their behalf, as of the day and year first hereinabove set forth.

GENERAL PARTNER:

AMERICAN PROPERTY INVESTORS, INC.

By: /s/
_____

Title: Executive Vice President

ORGANIZATIONAL LIMITED PARTNER:

/s/JULIA DESANTIS

EXHIBIT A
TO AMENDED AND RESTATED
AGREEMENT OF LIMITED
PARTNERSHIP OF AMERICAN
REAL ESTATE HOLDINGS
LIMITED PARTNERSHIP

CERTIFICATE
FOR
LIMITED PARTNER INTERESTS
OF
AMERICAN REAL ESTATE HOLDINGS LIMITED PARTNERSHIP

No. Interests

American Property Investors, Inc., as the General Partner of American Real Estate Holdings Limited Partnership (the "Partnership"), a Delaware limited partnership, hereby certifies that_____limited partner interests in the Partnership ("Interests") have been issued to_____. The rights, preferences and limitations of the Interests are set forth in the Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement") under which the Partnership was formed and is existing, and in the Certificate of Limited Partnership filed for record in the Office of the Secretary of State of Delaware, copies of which are on file at the General Partner's principal office at 666 Third Avenue, New York, New York 10017. Neither this Certificate nor the Interests evidenced hereby is transferable, except upon death, by operation of law or as otherwise provided in the Partnership Agreement.

American Property Investors, Inc.

General Partner of
American Real Estate Holdings
Limited Partnership

Dated:

By: _____

Title: _____

DEPOSIT OF CERTIFICATES OF LIMITED PARTNER INTERESTS; REPRESENTATIONS AND WARRANTIES OF THE PARTNERSHIP

2.1 Deposit of Certificates of Limited Partner Interests. Pursuant to Section 9.01 of the Partnership Agreement, and subject to terms and conditions of this Agreement, on the Closing Date, the General Partner shall deposit with the Depositary a Certificate or Certificates evidencing the aggregate whole number of Units to be issued pursuant to the Exchange. Such deposit shall be accompanied by (a) written instructions containing the name, address, social security or taxpayer identification number of and the number of Depositary Units to be issued to (i) each API investor, (ii) each API General Partner or affiliate thereof and (iii) API Nominee Corp., the designated nominee for the Non-Consenting Investors, and (b) a written request that the Depositary execute and deliver to each such API Investor, API General Partner or affiliate thereof and API Nominee Corp. Depositary Receipts evidencing the Depositary Units, registered in the name-of such API investor, API General Partner or API Nominee Corp., in accordance with such written instructions. Each API Investor, API General Partner or affiliate thereof and API Nominee Corp. shall thereupon be recognized by the Partnership as a Record Holder as of the Closing Date.

2.2 Representations and Warranties of the Partnership. The Partnership represents and warrants that (a) upon delivery, each Certificate will evidence validly issued, fully paid and non-assessable limited partner interests and (b) any Depositary Receipts duly executed and delivered by the Depositary under this Agreement will evidence validly issued, fully paid and non-assessable Depositary Units. The Depositary shall not be liable to any Person for any expense or damage incurred as the result of any breach by the Partnership of these representations and warranties, which shall survive the deposit of Certificates and the delivery of Depositary Receipts.

ARTICLE III

DEPOSITARY RECEIPTS

3.1 Delivery Of Depositary Receipts. Subject to the terms and conditions of this Agreement, upon the deposit of one or more Certificates by the General Partner pursuant to Section 2.1 hereof, the Depositary shall execute and deliver

Depositary Receipts in accordance with the written instructions of the General Partner accompanying such deposit.

3.2 Effect of Acceptance of Depositary Receipt. By acceptance of delivery of a Depositary Receipt, the person to whom such Depositary Receipt is delivered or the transferee thereof shall be deemed to be bound by the terms and conditions of this Agreement and the Depositary Receipt as each may be amended from time to time.

3.3 Form of Depositary Receipt; Denominations Execution.

(a) Depositary Receipts shall be engraved, printed or lithographed on steel-engraved borders and shall be substantially in the form of Exhibit A to this Agreement with appropriate insertions, modifications and omissions as are required or permitted by this Agreement and shall be prenumbered by the bank note company prior to delivery of the Depositary Receipts to the Depositary.

(b) Depositary Receipts shall be issuable in denominations of any number of Depositary units, except that no Depositary Receipt shall represent a fraction of a Depositary Unit.

(c) Depositary Receipts may be endorsed with, or have incorporated in the text thereof or be accompanied by such legends or recitals, attachments or changes, not inconsistent with the provisions of this Agreement and the Partnership Agreement, as may be required to comply-with any applicable law or regulation or the rules and regulations of any securities exchange upon which the Depositary Units may be listed, or to conform with any usage with respect thereto, or to indicate any special limitation or restriction to which any

particular Depositary Unit may be subject, or as may for any other reason be required.

(d) Each Depositary Receipt shall be duly executed on behalf of the Depositary by the manual or facsimile signature of a duly authorized person of the Depositary. No Depositary Receipt shall be entitled to any benefit under the Partnership Agreement or this Agreement or be valid for any purpose 1-inless it has been executed with such a signature.

3.4 Numbering and Registration of the Depositary Receipts. All Depositary Receipts executed by the Depositary shall be issued in numerical order. The Record Holder of

each number of Depositary Receipt shall be registered on the books of the Depositary and the Transfer Agent.

3.5 Combination and Split-Ups of Depositary Receipts. Upon surrender by the Record Holder, in person or by duly authorized attorney, of one or more Depositary Receipts at the Depositary's corporate office located at 61 Broadway, New York, New York (the "Corporate Office"), or any other. office it may designate for such purpose, for split-up or combination, the Depositary shall, subject to the terms and conditions of this Agreement and the Partnership Agreement:, execute and deliver one or more new Depositary Receipts in authorized denominations as requested, evidencing the! same number of Depositary units as evidenced by the Depositary Receipts surrendered.

3.6 Lost or Mutilated Depositary Receipts. If any Depositary Receipt is mutilated, destroyed, lost or stolen, the Depositary shall execute and deliver a Depositary Receipt of like form in substitution for the mutilated, destroyed, lost or stolen Depositary Receipt; provided, that the Depositary may-require the Record Holder (a) to surrender any, mutilated Depositary Receipt, (b) to file with the Depositary in a form and manner satisfactory to it, proof of the destruction, loss or theft, and of such Record Holder's ownership, of the Depositary Receipt and (c) to furnish the Depositary with an open indemnity bond for the benefit of the Depositary and the Partnership, satisfactory to the Depositary.

3.7 Limitations on Exchange and Delivery, Transfer, Surrender and Exchange of Depositary Receipts. As a condition precedent to the execution and delivery, transfer, split-up, combination, surrender, or conversion or exchange of any Depositary Receipt, the Depositary may require (a) payment of a sum sufficient for reimbursement of any tax or governmental charge with respect thereto (including any such tax or charge with respect to Depositary units being deposited or withdrawn)i (b) production of proof satisfactory to it as to the identity and genuineness of any signature or endorsement or as to the due authorization of the action, (c) filing of such information and execution of such documents by the transferor and/or the transferee as may be required by the Partnership Agreement or otherwise be deemed necessary or appropriate by the Depositary and (d) compliance with such other conditions as may be imposed under applicable laws and regulations. The Depositary shall be entitled to rely upon, and shall not have any liability to the Partnership, the General Partner, any Record Holder or any other Person with respect to the content of any proof submitted to it pursuant

to this Section 3.7, and shall have no obligation to inquire as to the truth and accuracy thereof.

3.8 Cancellation and Return of Surrendered Depositary. All Depositary Receipts surrendered to the Depositary shall be cancelled and disposed of in accordance with the. regulatory obligations of the Depositary. The Depositary shall, in instances in which Depositary Units have been converted to limited partner interests pursuant to Article V hereof, return to the Partnership the corresponding Certificate, and shall retain other instruments, documents and records in accordance with the policies and regulations of the Depositary, federal securities laws and rules and regulations of any securities exchange

upon which Depositary Receipts may be listed, and from time to time may deliver such instruments, documents and records in the form retained to the Partnership.

3.9 Supply of Depositary Receipts. The Partnership shall deliver to the Depositary from time to time such quantities of forms of Depositary Receipts as the Depositary may request to enable the Depositary to perform its obligations under this Agreement.

3.10 Filing Proofs, Certificates and Other Information. Any Record Holder or transferee thereof may be required from time to time to file such information, to execute such certificates and to make such representations and warranties as the Depositary or the General Partner may reasonably deem necessary or proper. The Depositary may withhold the delivery, transfer or exchange of any Depositary Receipt (or any distribution in respect thereof) until such information is filed or such certificates are executed or such representations or warranties are made.

3.11 Transfer, etc. The execution and delivery of Depositary Receipts may be suspended, or the transfer, split-up, combination, surrender conversion, exchange or delivery of outstanding Depositary Receipts may be suspended during any period when the register of Record Holders closed or at any time and from time to time because of' any provision of the Partnership Agreement or this Agreement or any requirement of law, any governmental body, or commission or any, securities exchange upon which the Depositary Units underlying the Depositary Receipts may be listed, or when suspension is otherwise deemed necessary or advisable by the Partnership, the General Partner or the Depositary.

3.12 Agent. Unless or until prohibited by law, regulation or securities exchange rule, the Depositary

shall also be the Transfer Agent for Depositary Receipts so long as it continues to be the depositary for the Partnership pursuant to this Agreement it being acknowledged by the parties hereto that the Transfer Agent shall be entitled to terminate this Agreement and withdraw as Transfer Agent and Depositary pursuant to Section 10.1 hereof.

ARTICLE IV

TRANSFER OF UNITS

4.1 Transferability. Depositary Receipts are investment securities and are transferable according to the laws governing transfers of investment securities. Subject to the terms and conditions of this Agreement-and the Partnership Agreement, title to a Depositary Unit(s) may only be transferred upon surrender of the Depositary Receipt evidencing -such Depositary Unit(s) by the holder thereof, in person or by truly. authorized attorney, to the Depositary at. the Corporate office or at any other office the Depositary may designate for the purpose, properly endorsed and properly signature guaranteed or accompanied by an instrument of transfer executed by the transferor and accompanied by a Transfer Application properly executed by the Subsequent Transferee, whereupon the Depositary will transfer such Depositary Unit(s) on its books and the Subsequent Transferee shall become the Record Holder thereof. No attempted transfer of Depositary units will be recorded and recognized by the Depositary unless and until the requirements of this Section 4.1 are satisfied and until any such transfer is so recorded and recognized the Depositary shall treat this transferor of such Depositary Units as the Record,Hol4ler thereof notwithstanding any notice to the contrary or notwithstanding any notation or other writing on the Depositary Receipt evidencing such Depositary Units.

4.2 Issuance of New Depositary Receipts. The Depositary shall, upon satisfaction of the provisions of Section 4.1. hereof, execute and deliver to the Subsequent Transferee one or more new Depositary Receipts representing, in the aggregate, the number of Depositary units as to which such Subsequent Transferee has been recorded on the books of the Depositary as the Record Holder.

4.3 Admission of Subsequent Transferees And Non-Consenting Investors as Substituted Limited Partners. On the close of business on the last business day of each month, the Depositary shall, on behalf of each Subsequent Transferee and

Non-Consenting Investor who has been recorded on the books of the Depositary as a Record Holder during such month, request

the General Partner to admit each such Subsequent Transferee and Non-Consenting Investor as a Substituted Limited Partner. on or prior to the 30th day after the receipt of such request, the General Partner shall advise the Depositary which of such Subsequent Transferees and Non-Consenting Investors have been admitted as a Substituted Limited Partner. The Record Holder of a Depositary Receipt, unless and until admitted as a Substituted Limited Partner, has the rights of any assignee as provided under the Partnership Agreement in respect of the Depositary Units evidenced by the Depositary Receipt.

ARTICLE V

WITHDRAWAL AND REDEPOSIT OF UNITS

5.1 Surrender of Depositary Receipts. Any Record Holder who is a Limited Partner of the Partnership desiring to surrender his Depositary Receipts and withdraw his Depositary Units from deposit may do so by delivering to this Depositary at the Corporate Offices or such other office is the Depositary may designate, his Depositary Receipts, in person or by duly authorized attorney, properly endorsed in blank or accompanied by a properly executed instrument of transfer (which may be in blank form). Such delivery shall be accompanied by written instructions which set forth an intention by the Record Holder to surrender his Depositary Receipts and withdraw his Depositary Units from deposit,, together with such other instruments or documents as the General Partner or the Depositary may deem necessary or desirable. The Depositary shall deliver a copy of such instructions to the . Partnership at the Partnership's sole cost and expenses.

5.2 Issuance of Certificates of Limited Partner Interests. Upon receipt of those instructions from the Depositary as set forth in Section 5.11 the Partnership shall cause a Certificate evidencing the limited partner interests corresponding to the surrendered Depositary Receipts to be delivered to the Record Holder as promptly as possible following the surrender of the Depositary Receipts. The Partnership will promptly notify the Depositary to cancel the Depositary Receipts, to deliver to the Partnership the Certificate held by the Depositary corresponding to the Depositary Receipts to be cancelled and to adjust its records accordingly.

5.3 Representations and Warranties by Record Holder. Each Record Holder surrendering one or more Depositary Receipts under Section 5.1 shall be deemed thereby to represent and warrant that (a) he or it is a Limited Partner of

the Partnership, (b) he or it is, or is duly authorized to be, acting for a Record Holder and (c) to the best of such Record Holder's knowledge, each Depositary Unit evidenced by such Depositary Receipt is validly issued. The Depositary shall not be liable to the Partnership, any Record Holder or any other Person for any expense or damage incurred is a result of any breach by such Record Holder of the foregoing representations and warranties, which shall survive the surrender of Depositary Receipts.

5.4 Redeposit.

(a) Units withdrawn from deposit may be redeposited by a record Holder (a "Depositor") by depositing with the Depositary the certificate evidencing such units. Redeposit of Units that have been withdrawn shall be subject to receipt by the Depositary of 60 days' advance written notice and a check, made pa-able td the Depositary, in the amount of five (5) dollars for each one hundred (100) Units so redeposited and to such other conditions as may be prescribed in the Partnership Agreement. Any amounts so received by the Depositary shall be applied by the Depositary to amounts owed by the Partnership to the Depositary. In the event that such notice is not accompanied by such payments the Depositary shall nevertheless perform in accordance with the instructions contained in the notice. The Depositary shall promptly notify the. Partnership of any redeposit

of Units.

(b) Upon each delivery to the Depositary of Certificate(s) to be redeposited, the Depositary shall, as soon as transfer and recordation can be accomplished, present such Certificate(s) to the Partnership for transfer and recordation of the Units being deposited in the name of the Depositary.

(c) Upon receipt of Certificate(s) from the Partnership in the name of the Depositor, the Depositary shall issue and deliver at its Corporate Office to or upon the order of the Person(s) designated by the Depositor, a Depositary Receipt or Receipts registered in the name or names and representing the number of Depositary Units requested.

ARTICLE VI

6.1 Reports.

(a) The Depositary shall make available for inspection by Record Holders at the Corporate Office and at such other

office or offices as it may designate, during normal business hours, and shall, as required, furnish to the Securities and Exchange Commission (the "Commission") any report, financial statement or Communication received from the Partnership or the managing General Partner that is both (i) received by the Depositary as the depositary of Certificates and (ii) made generally available to Record Holders.

(b) The Depositary shall keep all records required to be kept, for the periods specified, and shall file with the Commission -all materials required so to be filed, under the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, by virtue of its agreement to act as Depositary and as Transfer Agent under this Agreement. A copy of any material filed by the Depositary with the Commission shall be mailed to the Partnership and the General Partner within two business days after its filing. To the extent that any such filing requires information from the Partnership or the-General Partner, such information shall be furnished to the Depositary by the Partnership or the General Partner in sufficient quantity and a sufficient time in advance of the date the filing is required to be made to "'enable the Depositary to comply with such requirements.

6.2 Lists of Record Holders. Upon the written request. of the Partnership, the Depositary shall as promptly as practicable furnish to the Partnership a list, as of the date specified in such request, of the names, addresses and social security or taxpayer identification numbers of all Record Holders.

6.3 Maintenance of Offices and Transfer Books by Depositary.

(a) The Depositary shall maintain at its Corporate Office, and at such office or offices as it may designate, facilities for the execution, transfer, split-up, combination, surrender, conversion, exchange and delivery of Depositary Receipts.

(b) The Depositary shall keep books at its Corporate Office for the transfer of Depositary Receipts. The books shall be open during normal business hours for inspection by the Record Holders upon demonstration of a valid business Purpose for such inspection.

(c) The Depositary may close the transfer books, at any time or from time to time, when deemed expedient by it in connection with the performance of its duties under this Agreement.

ARTICLE VII

INFORMATION AND DISTRIBUTION

7.1 Duty to Furnish and Transmit Certain Information. The Partnership is required by the Partnership Agreement to furnish to Record Holders certain reports and notices. To facilitate the furnishing of such reports and notices, the Depositary shall, at the General Partner's request, furnish to the Partnership, as promptly as practicable, the name and address of each Person who was a Record Holder on any record date previously established by the General Partner. The Partnership may, in its sole discretion, elect to furnish any or all reports or notices pursuant to the Partnership Agreement to the Depositary and direct the Depositary to distribute to Record Holders any or all of such reports or notices if the Partnership shall elect to direct the Depositary to furnish any report or notice, the Partnership shall furnish to the Depositary a sufficient quantity of each such report or notice for transmittal to Record Holders, accompanied by directions to the Depositary as to the Persons to whom such reports or notices are to be transmitted. Upon receipt of any such report or notice and directions, the Depositary shall, within five business days and at the Partnership's expense, mail such report or notice to the Persons specified in such directions. The Depositary shall be entitled to rely upon, and shall not have any liability to the Partnership, any Record Holder or any other Person for distribution of such reports or notices in accordance with such directions, and the Depositary shall not have any liability to the Partnership, any Record Holder or-any other Person with respect to the content (including the truth, accuracy, completeness or fairness thereof, or the conformity thereof to the requirements of the Partnership Agreement or applicable law) of any such report.

7.2 Distributions. As provided in the Partnership Agreement, the Partnership may from time to time make distributions to Record Holders. To facilitate the making Of such distributions, the Depositary shall, at the General Partner's request, furnish to the Partnership, as promptly as practicable, (i) the name and address of each Person who was a Record Holder on any record date previously established by the General Partner and (ii) the number of Depositary Units (or Units in the case of Record Holders who have surrendered their Depositary Receipts) registered in the name of such Record Holder on any such record date. The Partnership may, in its sole discretion, elect to make any such distribution directly or elect to direct the Depositary to make any such distribution to Record Holders. If the Partnership shall

elect to direct the Depositary to make any such distribution, then at least ten business days before the distribution is to be made, the Partnership shall furnish to the Depositary directions as to the Persons to whom such distributions are to be made, the amount to be distributed to each Person, the rate of distribution, and the date on or prior to which such distribution is to be made. Along with such directions, the Partnership shall provide the Depositary with a sufficient number of checks as necessary to make such distributions. In connection therewith, a separate disbursement account: for cash distributions shall be set up, and the Depositary shall be the sole signatory thereof. The Depositary shall, not later than the date specified in the Partnership's directions, deliver to the Record Holders checks by U.S. mail in conformity with such directions and at the expense of' the Partnership. Notwithstanding the foregoing, the amounts to be so distributed may be reduced by any amount required to be withheld by the Partnership or the Depositary on account of taxes or other charges which are the expense of the Record Holders. The Depositary shall be entitled to rely upon, and shall not have any liability to the Partnership, any Record Solder or any other Person for making any distribution or withholding any such amounts 'in accordance with such directions.

7.3 Voting. Upon receipt from the Partnership of notice of any meeting at which Record Holders are entitled to vote or of which they are entitled to notice, the Depositary shall, at the request of the Partnership, mail to each Record Holder, as of the Record Date specified in the notice of meeting, a copy of the notice. At least ten business days before the notice is to be mailed the Partnership shall furnish sufficient copies of said statement to accomplish the foregoing notice. Whether or not a Record Holder is entitled to vote on any matter concerning the Partnership shall be governed by the terms of the Partnership Agreement and applicable law.

ARTICLE VIII

STATUS AND OTHER ACTIVITIES OF DEPOSITARY; IMMUNITIES, INDEMNIFICATION

8.1 Depositary Not A Trustee, Issuer, etc. The Depositary is not a trustee. The Depositary shall have no right or legal or equitable title to Certificates . deposited under this Agreement or the Units evidenced thereby. The Depositary shall have no right or power to sell, invest in, pledge, .mortgage or borrow against any Certificates deposited under this Agreement or the Units evidenced thereby. It is

intended that the Depositary in its capacity as depositary not be needed to be an "issuer" or underwriter" of securities under the Federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary is acting only as a ministerial depositary for Certificates and the Units evidenced thereby.

8.2 Other Activities of Depositary. The Depositary may own and deal in, and act as registrar or transfer agent for, any class of securities of the Partnership (including Certificates, Depositary Receipts, Units and Depositary Units), the General Partner or Affiliates of the General Partner.

8.3 Immunities. Neither the Depositary, the General Partner or any Affiliates of the General Partner (i) assumes any obligation or shall be subject to any liability under this Agreement to any Record Holder or their transferees, other than that each of them agrees to use its best judgment and good faith in the performance of such duties as are specifically set forth in this Agreement; (ii) shall be under any obligation to appear in, prosecute or defend any Section, suit or other proceeding in respect of Certificates (or the Units evidenced thereby) or Depositary Receipts (or the Depositary Units evidenced thereby) that in its opinion may involve it in expense or liability unless indemnity, in addition to that provided by Section 8.4, satisfactory to it against all expense and liability be furnished as often as may be required; and (iii) shall be liable for any action or nonaction by it in reliance upon the advice of or information from legal counsel, accountants, any person presenting Units for deposit, any Record Holder or their' assignees, or any other Person believed by it in good faith to be competent to give such advice or information. The Depositary, the General Partner and any Affiliates of the General Partner each may rely and shall be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the proper Person or Persons.

8.4 Indemnification.

(a) The Depositary shall indemnify and hold harmless the Partnership, the General Partner and the officers, directors and employees of the General Partner from any loss, liability or damage incurred or suffered by any such Person, including attorneys' fees, due to the fraud, gross negligence or willful or criminal misconduct of the Depositary.

(b) The Partnership and the General Partner hereby represent and warrant that they will indemnify and hold

harmless the Depositary, the Depositary's directors, officers, employees, servants, agents or contractors-, or their affiliates or their heirs, successors or assigns (individually, the "Indemnitee") incurred by them or any one of them at any time after the date of this Agreement from and against any and all, but not limited to, losses, damages, claims, demands, actions, suits, proceedings liabilities (joint and several), judgments, fines, penalties, awards, settlements costs or expenses of any nature, including. reasonable attorneys' fees brought against, incurred, suffered, or sustained by them, or any of them, for reasons arising by, through or as a result of any and -ill claims, demands, actions, suits or civil, criminal or administrative or investigative proceedings in which the Indemnitee may be involved or threatened to be involved, as a party of otherwise, by reason of (i) this Agreement, the Partnership Agreement or any agreement related thereto; (ii) the Indemnitee, acting pursuant to the terms of this Agreement, or (iii) the activities of the Partnership, General Partner or their affiliates, the Record Holders or Limited Partners; provided, however,

that any such indemnification shall only be from the assets of the Partnership and the General Partner and not from the Record Holder's or their assigns. Unless such claim, demands, action, suit or -proceeding arises out of the willful, intentional or criminal misconduct, gross negligence or fraud of the Indemnitee, expenses incurred by an Indemnitee in defending any claim, demand, action, suit or proceeding be paid by the Partnership or the General Partner within twenty (20) days of demand for payment by the Indemnitee and prior to the final disposition of such claim, demand, action, suit or proceeding. Notwithstanding the foregoing, no Indemnitee whose willful, intentional or criminal misconduct, gross negligence or fraud caused the loss, damages, claims, demands,. actions, suits, proceedings, liabilities (joint and several), judgements, fines, penalties, awards, settlements, costs or expenses of any nature, including reasonable attorney's fees may receive such indemnification and any such Indemnitee who has received payment for expenses pursuant to the previous sentence shall be obligated to repay the amount of such payment to the Partnership or the General Partner, as the case may be, promptly after it has been determined that such Indemnitee was not entitled to be so indemnified; however, the termination of any action, suit or proceeding by judgment, order, settlement, or conviction upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a-presumption or otherwise constitute evidence that the Indemnitee's acts were willful, criminal or intentional misconduct, gross negligence, or fraud on its part. The representations and warranties contained herein shall survive the date and termination of this Agreement.

8.5 Tax Matters. The Depositary shall not have any duty, obligation or liability with respect to (i) allocation and Distribution of Federal tax benefits and responsibilities respecting the Partnership, the General Partner or the Record Holders or (ii) any income or other tax reporting obligations imposed upon the Partnership or any Record Holder to the Internal Revenue Service or any other Federal, state or local taxing authority.

ARTICLE IX

EXPENSES AND CHARGES

9.1 General. The Depositary shall be reimburses for its services by the Partnership in amounts equal to the amounts its shall be agreed upon by the Partnership an4i the Depositary from. time to time.

9.2 Governmental Charges. If any tax or other governmental charge becomes payable with respect to a Certificate or a Depositary Receipt or Units or Depositary Unit as evidenced, thereby or with respect to the deposit, transfer or surrender of any of the foregoing, such tax (including transfer tax, if any) or governmental charge shall be payable by the appropriate Record Holder. Transfer of a Depositary Receipt or conversion of the underlying Depositary Units into Units may be refused until such payment is made, and any distribution may be withheld and be applied to payment of such tax or other governmental charge, with such Record Holder remaining liable for any deficiency.

ARTICLE X

RESIGNATION AND REMOVAL OF DEPOSITARY: AMENDMENT AND TERMINATION OF AGREEMENT

10.1 Resignation and Removal of Depositary; Appointment of Successor Depositary.

(a) The Depositary may at any time resign as Depositary under this Depositary Agreement upon sixty (60) days' written notice of its-election to do so delivered to the Partnership, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided. The Depositary may terminate its obligations under this Agreement ten (10) days after a demand for payment of unpaid invoices is delivered in writing to the Partnership and the Partnership has not responded with Payments as demanded.

(b) The Depositary May at any time be removed by the Partnership upon sixty (60) days' written notice of removal delivered by the Partnership to the Depositary. Such removal shall be effective upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

(c) if the Depositary resigns or is removed, the Partnership shall, after the delivery of the notice of resignation or removal, as the case may be, appoint a successor depositary. If no successor has been appointed within seventy -five (75) days of the delivery of the notice of resignation or removal, the General Partner shall become the successor depositary. Any successor depositary shall execute and deliver to its predecessor and to the Partnership an Instrument accepting its appointment, and thereupon such successor depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor. The predecessor, upon payment of any sum due it and on the written request of the Partnership and at the Partnership's sole expense, shall execute and deliver an instrument transferring to the successor depositary all rights and powers of the predecessor under this Agreement, shall duly deliver to and deposit with the successor depositary all Certificates theretofore on deposit with the predecessor and shall deliver to the successor depositary a list of the Record Holders of all outstanding Depositary Units and Units and all records and books maintained by it. Any successor depositary shall promptly mail notice of its appointment-to the Record 'Raiders,

(d) Any corporation into or with which the Depositary may be merged or consolidated shall be the successor of the Depositary without the execution or filing of any document of any further act.

10.2 Amendment.

(a) Any provision of this Agreement, including the form of Depositary Receipt, may at any time and from time to time be amended in any respect by mutual agreement of the Partnership and the Depositary, so long as such amendment does not impair the right of a Record Holder who is a Limited Partner to surrender a- Depositary Unit and withdraw from deposit any of the Depositary Units evidenced thereby or to redeposit Units previously withdrawn from deposit and receive a Depositary Receipt evidencing such redeposited Units.

(b) Any amendment of this Agreement that imposes any fee, tax or charge (other than fees and charges provided for in this Agreement) upon, or otherwise adversely affects the rights of, Record Holders shall not be effective until the expiration of 30 days after notice of the amendment ahs been given to the Record Holders.

(c) The Depositary shall give notice of any amendment of this Agreement to each securities exchange upon which Depositary Units may be listed and shall also give notice thereof in writing to all Record Holders In the discretion of the Depositary, the text or substance of any amendment may be incorporated-in the Depositary Receipts issued after its adoption.

(d) Every Record Holder at the time any amendment of this Agreement becomes effective shall be deemed, by continuing to hold a Depositary Receipt evidencing Depositary Units, to consent and agree to the amendment and to be bound .by this Depositary Agreement as amended thereby.

10.3 Termination.

(a) The Depositary shall terminate this Agreement, whenever directed to do so by the Partnership, by mailing, at the Partnership's sole expense, notice of termination to the Record Holders at least 60 days before the date fixed for the termination in such notice.

(b) Upon termination of this Agreement, the Depositary shall discontinue the transfer of Depositary Units, shall suspend the distribution of reports, notices and disbursements to Record Holders, shall be discharged from all obligation under this Agreem6nt, except for its obligations under Section 8.4 hereof, and shall not give any further notice (other than notice of such termination) or perform any further act under this Agreement except, if such

termination is not in connection with the execution of a new Agreement with a new Depositary, that the Depositary shall, at the Partnership's sole expense continue to accept Depositary Receipts and written instructions for-the surrender thereof pursuant to Section 5.1 hereof and shall return such instructions to the presenter thereof, along with notice as to the a appropriate recipient, as indicated by the Partnership, to whom such instructions should be sent. Upon request of the Partnership, the Depositary shall deliver all books, records, Certificates, Depositary Receipts and other documents respecting the subject matter of this Agreement to the Partnership.

(c) Upon termination of this Agreement, the Partnership, the General Partner and the Record Holders shall be discharged from all obligations under this Agreement, except for the obligations of the Partnership and the Managing General Partner under Section 8.4 and Article IX hereof.

ARTICLE XI

MISCELLANEOUS

11.1 Counterparts. This Agreement may be executed in any number of. counterparts, which shall constitute one and the same instrument. Copies of this Agreement shall be filed with the Depositary and shall be open to inspection during normal business hours at the Depositary's Corporate Office by any Record Holder.

11.2 Invalidity of Provisions. If any provision, of .this Agreement or of the Depositary Receipts is or becomes invalid, illegal or unenforceable in any respect of the validity, legality and enforceability of the remaining provisions contained herein or therein shall not be affected thereby.

11.3 Notices.

(a) Any notice to be- given hereunder shall be deemed to have been duly given if personally delivered or sent be telegram or telex, confirmed by letter, addressed to the party in the manner and at the address shown below, or at such address as the party has specified in a notice given. in accordance with this Section 11.3.

To the Partnership:

American Real Estate Partners, L.P.
666 Third Avenue
New York, New York 10017
Attn: Lynn Zuckerman Gray

To the General Partner:

American Property Investors, Inc.
666 Third Avenue
New York, New York 10017
Attn: Lynn Zuckerman Gray

To the Depositary:

Registrar & Transfer Co.
10 Commerce Drive
Cranford, New Jersey
Attn: William P. Tatler

(b) Any notice to be given to any Record Holder shall be deemed to have been duly given if personally delivered or sent by mail or by telegram or telex confirmed by letter, addressed to such Record Holder at the' address of such Record Solder as it appears on the books of the Depositary or if such Record Holder has filed with the Depositary a written .request that notices intended

for such Record Holder be mailed to some other address, at the address designated in such request.

(c) Any notice shall be deemed given, unless earlier received, (i) if sent by certified or registered mail, return receipt requested, or by first-class mail, five calendar days after being deposited in the United States mails, postage prepaid, (ii) if sent by United States Express Mail, two calendar days after being deposited in the United States mails, postage prepaid, (iii) if sent by telegram or, telex or facsimile transmission, on the date sent provided confirmatory notice sha11 be promptly sent by first-class mail, postage prepaid, or (iv) if delivered by hand, on the date of receipt.

11.4 Record Holders to the Parties. The Record Holders and their transferees from t shall be, and shall be deemed to be, parties to this Agreement and shall be bound by all the terms and conditions hereof and of the Depositary Receipts by acceptance thereof.

11.5 Binding Effects. No party to this Agreement, other than a Record Holder, may sell, transfer or otherwise convey any of its rights, or delegate any of its duties, under this Agreement without the prior written consent of all other parties hereto except that the Depositary may, in its discretion, delegate those ministerial duties which are so delegated in the normal course of its business; provided, however, that any merger, sale or reorganization of any party shall not constitute a sale, assignment, transfer, conveyance or delegation for this purpose. Any attempted sale, assignment, transfer, conveyance or delegation in violation of this Section 11.5 shall be void.

11.6 Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding

masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

11.7 Governing Law. This Agreement and the Depositary Receipts and all rights hereunder and thereunder and provisions hereof and thereof shall be governed by and construed in accordance with the laws of the State of Delaware.

11.8 Captions. The headings of articles and sections in this Agreement and in the form of Depositary Receipt set forth in Exhibit A hereto have been inserted for convenience only and are not to be regarded as a part of this Agreement or of any Depositary Receipt or to have any bearing upon the meaning or interpretation of any provisions contained herein or in the Depositary Receipt.

IN WITNESS WHEREOF, the parties have executed this Depositary Agreement as of the date first above written.

AMERICAN REAL ESTATE
PARTNERS, L.P.

By: American Property Investors,
Inc., the general partner

By: _____
Title: SVP

AMERICAN PROPERTY INVESTORS, INC.

By: _____
Title: SVP

REGISTRAR AND TRANSFER COMPANY

By:

Title: President

Exhibit 4.6

EXECUTION COPY

AMERICAN CASINO & ENTERTAINMENT PROPERTIES LLC

AMERICAN CASINO & ENTERTAINMENT PROPERTIES FINANCE CORP.

AND EACH OF THE GUARANTORS PARTY HERETO

7.85% SENIOR SECURED NOTES DUE 2012

INDENTURE

Dated as of January 29, 2004

WILMINGTON TRUST COMPANY

Trustee

CROSS-REFERENCE TABLE*

Trust Indenture Act Section	Indenture Section
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	7.10
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	2.05
(b)	13.03
(c)	13.03
313(a)	7.06
(b)(1)	10.03
(b)(2)	7.06; 7.07
(c)	7.06; 10.03; 13.02
(d)	7.06
314(a)	4.03;13.02; 13.05
(b)	10.02
(c)(1)	13.04
(c)(2)	13.04
(c)(3)	N.A.
(d)	10.03, 10.04, 10.05
(e)	13.05
(f)	N.A.
315(a)	7.01
(b)	7.05,13.02
(c)	7.01
(d)	7.01
(e)	6.11
316(a) (last sentence)	2.09
(a)(1)(A)	6.05
(a)(1)(B)	6.04
(a)(2)	N.A.
(b)	6.07
(c)	2.12
317(a)(1)	6.08

	(a)(2)	6.09
	(b)	2.04
318	(a)	13.01
	(b)	N.A.
	(c)	13.01

N.A. means not applicable.

* This Cross Reference Table is not part of the Indenture.

TABLE OF CONTENTS

EXHIBITS

INDENTURE dated as of January 29, 2004 among American Casino & Entertainment Properties LLC, a Delaware limited liability company, as issuer ("ACEP"), American Casino & Entertainment Properties Finance Corp., a Delaware corporation, as co-issuer ("ACEP Finance", and together with ACEP, the "Company"), the Guarantors (as defined) and Wilmington Trust Company, as trustee (the "Trustee").

The Company, the Guarantors and the Trustee agree as follows for the benefit of each other and for the equal and ratable benefit of the Holders (as defined) of the 7.85% Senior Secured Notes due 2012 (the "Notes"):

ARTICLE 1.
DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

"144A Global Note" means a Global Note substantially in the form of Exhibit A1 hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of, and registered in the name of, the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold in reliance on Rule 144A.

"ACEP" means American Casino & Entertainment Properties LLC, and any and all successors thereto.

"ACEP Finance" means American Casino & Entertainment Properties Finance Corp., and any and all successors thereto.

"Acquired Debt" means, with respect to any specified Person:

(1) Indebtedness of any other Person existing at the time such other Person is merged with or into or became a Subsidiary of such specified Person, whether or not such Indebtedness is incurred in connection with, or in contemplation of, such other Person merging with or into, or becoming a Restricted Subsidiary of, such specified Person; and

(2) Indebtedness secured by a Lien encumbering any asset acquired

by such specified Person.

"Acquired Subsidiaries" means Arizona Charlie's, LLC (f/k/a Arizona Charlie's, Inc.), a Nevada limited liability company, Charlie's Holding LLC, a Delaware limited liability company, Fresca, LLC, a Nevada limited liability company, Stratosphere Advertising Agency, a Nevada corporation, Stratosphere Corporation, a Delaware corporation, Stratosphere Development, LLC, a Delaware limited liability company, Stratosphere Gaming Corp., a Nevada corporation, Stratosphere Land Corporation, a Nevada corporation and Stratosphere Leasing, LLC, a Delaware limited liability company.

"Acquisitions" means the acquisitions of the Properties by ACEP pursuant to the Acquisition Agreements.

"Acquisition Agreements" means, that certain membership interest purchase agreement, dated as of January 5, 2004, by and among ACEP, Starfire Holding Corporation and Carl C. Icahn, and that certain contribution agreement, dated as of January 5, 2004, by and among ACEP, AREH, American Entertainment Properties Corp. and Stratosphere Corporation.

"Acquisition Date" means the date and time of the consummation of the Acquisitions pursuant to the Acquisition Agreements.

"Additional Notes" means additional Notes (other than the Initial Notes) issued under this Indenture in accordance with Sections 2.02 and 4.09 hereof, as part of the same series as the Initial Notes.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise; provided that beneficial ownership of 10% or more of the Voting Stock of a Person shall be deemed to be control. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" shall have correlative meanings.

"Agent" means any Registrar, co-registrar, Paying Agent or additional paying agent.

"Applicable Procedures" means, with respect to any transfer or exchange of or for beneficial interests in any Global Note, the rules and procedures of the Depositary, Euroclear and Clearstream that apply to such transfer or exchange.

"AREH" means American Real Estate Holdings Limited Partnership.

"AREP" means American Real Estate Partners, L.P.

"Arizona Charlie's Boulder" means that certain hotel and casino located on approximately 24 acres at 4575 Boulder Highway, Las Vegas, Nevada, together with all other improvements (including any buildings) and property thereon.

"Arizona Charlie's Decatur" means that certain hotel and casino located on approximately 17 acres at 740 S. Decatur Boulevard, Las Vegas, Nevada, together with all other improvements (including any buildings) and property thereon.

"Asset Sale" means:

(1) the sale, lease, conveyance or other disposition of any assets or rights; provided that the sale, lease, conveyance or other disposition of all or substantially all of the assets of ACEP and its Restricted Subsidiaries taken as a whole will be governed by Section 4.15 and/or Section 5.01 and not by Section 4.10; and

(2) the issuance of Equity Interests in any of ACEP's Restricted Subsidiaries or the sale of Equity Interests in any of its Subsidiaries by ACEP or a Restricted Subsidiary.

Notwithstanding the preceding, none of the following items will be deemed to be an Asset Sale:

(1) any single transaction or series of related transactions that involves assets having a Fair Market Value of less than $1.0 million;

(2) a transfer of assets between or among the Company and its Restricted Subsidiaries;

(3) an issuance of Equity Interests by a Restricted Subsidiary of ACEP to ACEP or to a Restricted Subsidiary of ACEP;

(4) the sale or lease of products, services, equipment or accounts receivable in the ordinary course of business and any sale or other disposition of damaged, worn-out or obsolete assets in the ordinary course of business;

(5) the sale or other disposition of cash or Cash Equivalents;

(6) a Restricted Payment that does not violate Section 4.07 or a Permitted Investment;

(7) any Event of Loss;

(8) any Lease Transaction or any grant of easement or Permitted Liens or Hedging Obligations permitted hereunder;

(9) any dedication permitted pursuant to Section 4.21;

(10) any licensing of trade names or trademarks in the ordinary course of business by any of ACEP or the Restricted Subsidiaries; and

(11) the provision of accounting, financial management and information technology and other ancillary services to Affiliates provided in accordance Section 4.11.

"Attributable Debt" in respect of a sale and leaseback transaction means, at the time of determination, the present value of the obligation of the lessee for net rental payments during the remaining term of the lease included in such sale and leaseback transaction, including any period for which such lease has been extended or may, at the option of the lessor, be extended. Such present value shall be calculated using a discount rate equal to the rate of interest implicit in such transaction, determined in accordance with GAAP; provided, however, that if such sale and leaseback transaction results in a Capital Lease Obligation, the amount of Indebtedness represented thereby will be determined in accordance with the definition of "Capital Lease Obligation."

"Bank Credit Facility" means that certain credit agreement, dated as of the date hereof, among ACEP, as borrower, certain of ACEP's Subsidiaries, as guarantors, the lenders listed therein and Bear Stearns Corporate Lending Inc., as syndication agent and administrative agent together with all related agreements, instruments and documents executed or delivered pursuant thereto at any time (including, all notes, mortgages, guarantees, security agreements and all other collateral and security documents), in each case as such agreements, instruments and documents may be amended (including any amendment and restatement thereof), supplemented or otherwise modified from time to time, including any agreement extending the maturity of, refinancing, replacing or otherwise restructuring (including increasing the aggregate principal amount that may be borrowed thereunder) all or any portion of the Indebtedness and other obligations under such agreement or agreements or any successor or replacement agreement or agreements, and whether by the same or any other agent, lender, debt holder or group of lenders or debt holders.

"Bankruptcy Law" means Title 11, U.S. Code or any similar federal or state law for the relief of debtors.

"Beneficial Owner" has the meaning assigned to such term in Rule 13d-3 and Rule 13d-5 under the Exchange Act, except that in calculating the beneficial ownership of any particular "person" (as that

term is used in Section 13(d)(3) of the Exchange Act), such "person" will be deemed to have beneficial ownership of all securities that such "person" has the right to acquire by conversion or exercise of other securities, whether such right is currently exercisable or is exercisable only after the passage of time. The terms "Beneficially Owns" and "Beneficially Owned" have a corresponding meaning.

"Board of Directors" means:

(1) with respect to a corporation, the board of directors of the corporation or any committee thereof duly authorized to act on behalf of such board;

(2) with respect to a partnership, the Board of Directors of the general partner of the partnership;

(3) with respect to a limited liability company, the managing member or members or any controlling committee of managing members thereof or the Board of Directors of the managing member; and

(4) with respect to any other Person, the board or committee of such Person serving a similar function.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day which banking institutions located in such jurisdictions are authorized or required by law or other governmental action to close.

"Capital Lease Obligation" means, at the time any determination is to be made, the amount of the liability in respect of a capital lease that would at that time be required to be capitalized on a balance sheet prepared in accordance with GAAP, and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

"Capital Stock" means:

(1) in the case of a corporation, corporate stock;

(2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(3) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing (i) any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock and (ii) Financing Participations.

"Cash Equivalents" means:

(1) United States dollars;

(2) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities) having maturities of not more than one year from the date of acquisition;

(3) certificates of deposit and eurodollar time deposits with maturities of one year or less from the date of acquisition, bankers' acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any lender party to the Credit Facilities or with any domestic commercial bank having capital and surplus in excess of $500.0 million and a Thomson Bank Watch Rating of "B" or better;

(4) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (2) and (3) above entered into with any financial institution meeting the qualifications specified in clause (3) above;

(5) commercial paper having one of the two highest ratings obtainable from Moody's Investors Service, Inc. or Standard & Poor's Rating Services and, in each case, maturing within one year after the date of acquisition; and

(6) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (1) through (5) of this definition.

"Change of Control" means the occurrence of any of the following:

(1) the direct or indirect sale, lease, transfer, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the properties or assets of ACEP and its Subsidiaries taken as a whole to any "person" (as that term is used in Section 13(d) of the Exchange Act) other than the Principal or a Related Party;

(2) the adoption of a plan relating to the liquidation or dissolution of the Company;

(3) the consummation of any transaction (including, without limitation, any merger or consolidation), the result of which is that any "person" (as defined above), other than the Principal or the Related Parties, becomes the Beneficial Owner, directly or indirectly, of more than 50% of the Voting Stock of ACEP, measured by voting power rather than number of shares; or

(4) after an initial public offering of ACEP or any direct or indirect parent of ACEP (in either case, the "public company"), the first day on which a majority of the members of the Board of Directors of the public company are not Continuing Directors.

For purposes of this definition, any holding company whose only significant asset is the Capital Stock of ACEP shall be disregarded and the beneficial ownership of such holding company shall be attributed to ACEP and any Person which has entered into an agreement to acquire any Capital Stock of ACEP shall not be deemed to have any beneficial ownership of such Capital Stock until the closing of such acquisition.

"Clearstream" means Clearstream Banking, S.A.

"Collateral Agent" shall have the meaning set forth in the Pledge and Security Agreement.

"Collateral Documents" means, collectively, the Pledge and Security Agreement, the Deeds of Trust and any other agreements, instruments, financing statements or other documents that evidence, set forth or limit the Lien of the Trustee in the Note Collateral.

"Company" means, collectively, ACEP and ACEP Finance, and any and all successors thereto.

"Consolidated Cash Flow" means, with respect to any specified Person for any period, the Consolidated Net Income of such Person for such period plus, without duplication:

(1) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale, to the extent such losses were deducted in computing such Consolidated Net Income; plus

(2) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries for such period, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; plus

(3) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; plus

(4) depreciation, amortization (including amortization of intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and other non-cash expenses (excluding any such non-cash expense to the extent that it represents an accrual of or reserve for cash expenses in any future period or amortization of a prepaid cash expense that was paid in a prior period) of such Person and its Restricted Subsidiaries for such period to the extent that such depreciation, amortization and other non-cash expenses were deducted in computing such Consolidated Net Income; minus

(5) non-cash items increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business,

in each case, on a consolidated basis and determined in accordance with GAAP.

"Consolidated Net Income" means, with respect to any specified Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that:

(1) the Net Income of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be included only to the extent of the amount of dividends or similar distributions paid in cash to the specified Person or a Restricted Subsidiary of the Person;

(2) the Net Income of any Restricted Subsidiary will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders;

(3) the cumulative effect of a change in accounting principles will be excluded; and

(4) notwithstanding clause (1) above, the Net Income of any Unrestricted Subsidiary will be excluded, whether or not distributed to the specified Person or one of its Subsidiaries.

"Continuing Directors" means, as of any date of determination, any member of the Board of Directors of a public company who:

(1) was a member of such Board of Directors on the date of this Indenture; or

(2) was nominated for election or elected to such Board of Directors with the approval of the Principal or any of the Related Parties or with the approval of a majority of the Continuing Directors who were members of such Board of Directors at the time of such nomination or election.

"Corporate Trust Office of the Trustee" will be at the address of the Trustee specified in Section 13.02 hereof or such other address as to which the Trustee may give notice to the Company.

"Credit Facilities" means, one or more debt facilities (including, without limitation, the Bank Credit Facility) or commercial paper facilities, in each case with banks or other lenders providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, modified, renewed, refunded, replaced (whether upon or after termination or otherwise) or refinanced (including by means of sales of debt securities to institutional investors) in whole or in part from time to time.

"Custodian" means the Trustee, as custodian with respect to the Notes in

global form, or any successor entity thereto.

"Deeds of Trust" means each mortgage made by each of Stratosphere Corporation, Stratosphere Land Corporation, Arizona Charlie's, LLC and Fresca, LLC covering the land upon which each of their respective Properties will be located, as amended, modified or revised in accordance with its terms.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"Definitive Note" means a certificated Note registered in the name of the Holder thereof and issued in accordance with Section 2.06 hereof, substantially in the form of Exhibit A1 hereto except that such Note shall not bear the Global Note Legend and shall not have the "Schedule of Exchanges of Interests in the Global Note" attached thereto.

"Depositary" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.03 hereof as the Depositary with respect to the Notes, and any and all successors thereto appointed as depositary hereunder and having become such pursuant to the applicable provision of this Indenture.

"Disqualified Stock" means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Capital Stock), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Capital Stock, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require ACEP to repurchase such Capital Stock upon the occurrence of a change of control, event of loss, an asset sale or other special redemption event shall not constitute Disqualified Stock if the terms of such Capital Stock provide that ACEP may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or

redemption complies with Section 4.07 hereof or where the funds to pay for such repurchase was from the cash net proceeds of such Capital Stock and such net cash proceeds was set aside in a separate account to fund such repurchase. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that ACEP and its Restricted Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock, exclusive of accrued dividends.

"Domestic Subsidiary" means any Subsidiary of the Company that was formed under the laws of the United States or any state of the United States or the District of Columbia.

"Equity Interests" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, Capital Stock).

"Equity Offering" means an offer and sale of Capital Stock (other than Disqualified Stock) of ACEP (other than an offer and sale relating to equity securities issuable under any employee benefit plan of ACEP) or a capital contribution in respect of Capital Stock (other than Disqualified Stock) of ACEP.

"Escrow Agent" means Fleet National Bank.

"Escrow Agreement" means the Escrow and Security Agreement, dated as of the dated hereof, by and among the Company, AREH, the Trustee and the Escrow Agent.

"Euroclear" means Euroclear Bank, S.A./N.V., as operator of the Euroclear system.

"Event of Loss" means, with respect to any property or asset (tangible or intangible, real or personal) of any of the Properties, any of the following:

(1) any loss, destruction or damage of such property or asset; (2) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset; or (3) any settlement in lieu of clause (2) above.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Exchange Notes" means the Notes issued in the Exchange Offer pursuant to Section 2.06(f) hereof.

"Exchange Offer" has the meaning set forth in the Registration Rights Agreement.

"Exchange Offer Registration Statement" has the meaning set forth in the Registration Rights Agreement.

"Existing Indebtedness" means up to $3.9 million in aggregate principal amount of Indebtedness of ACEP and its Subsidiaries (other than Indebtedness under the Bank Credit Facility) in existence on the Acquisition Date, until such amounts are repaid.

"Fair Market Value" means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party, determined in good faith by the Board of Directors of ACEP (unless otherwise provided herein).

"Financing Participations" means a participation in the revenues generated by specified equipment or a specified amenity that was financed, in whole or in part, by the person receiving the participation.

"First Lien Obligations" means, at any time, the obligations under any Indebtedness (including Guarantees and the Bank Credit Facility) of ACEP or any Restricted Subsidiary permitted pursuant to Section 4.09 that is secured by a Lien on any of the Note Collateral that ranks senior in priority to the Lien securing the obligations under the Notes and the Note Guarantees; provided that the holder of the Indebtedness secured by such Lien has executed the Intercreditor Agreement or an intercreditor agreement having substantially similar terms as the Intercreditor Agreement.

"Fixed Charge Coverage Ratio" means with respect to any specified Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than ordinary working capital borrowings) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated and on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the "Calculation Date"), then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, Guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of preferred stock, and the use of the proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period. For the purpose of calculating the Fixed Charge Coverage Ratio (or any component thereof) at any time prior to the completion of the fourth full fiscal quarter after the Acquisition Date (and the availability of internal financial statements for such period), the Fixed Charge Coverage Ratio (and each component thereof) shall be calculated as if the Acquisitions had occurred at a date prior to the beginning of the fourth full fiscal quarter prior to the date of determination and shall be based upon the historical combined financial statements for such period as reflected in the historical combined financial statements included in the Offering Memorandum; provided that such calculation shall give pro forma effect to the offering of the Notes and the related interest, fees and expenses incurred in connection with the Notes.

In addition, for purposes of calculating the Fixed Charge Coverage Ratio:

(1) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers or consolidations, or any

Person or any of its Restricted Subsidiaries acquired by the specified Person or any of its Restricted Subsidiaries, and including any related financing transactions and including increases in ownership of Restricted Subsidiaries, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date shall be given pro forma effect (in accordance with Regulation S-X under the Securities Act) as if they had occurred on the first day of the four-quarter reference period;

(2) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, shall be excluded;

(3) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses (and ownership interests therein) disposed of prior to the Calculation Date, shall be excluded, but only to the extent that the obligations giving rise to such Fixed Charges will not be obligations of the specified Person or any of its Restricted Subsidiaries following the Calculation Date;

(4) any Person that is a Restricted Subsidiary on the Calculation Date shall be deemed to have been a Restricted Subsidiary at all times during such four-quarter period;

(5) any Person that is not a Restricted Subsidiary on the Calculation Date shall be deemed not to have been a Restricted Subsidiary at any time during such four-quarter period; and

(6) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness shall be calculated as if the rate in effect on the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months).

"Fixed Charges" means, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, including, without limitation, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, imputed interest with respect to Attributable Debt, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net of the effect of all payments made or received pursuant to Hedging Obligations in respect of interest rates (excluding any accrued interest or interest paid in kind in respect of Permitted Affiliate Subordinated Indebtedness); plus

(2) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period (excluding any capitalized interest in respect of Permitted Affiliate Subordinated Indebtedness); plus

(3) any interest on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries, whether or not such Guarantee or Lien is called upon; plus

(4) the product of (a) all dividends, whether paid or accrued and whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividends on preferred stock payable solely in Equity Interests of ACEP (other than Disqualified Stock) or to ACEP or a Restricted Subsidiary of ACEP, times (b) a fraction, the numerator of which is one and the denominator of which is one minus the then current combined federal, state and local statutory tax rate of such Person, expressed as a decimal, in each case, determined on a consolidated basis in accordance with GAAP.

"Foreign Subsidiary" means any Subsidiary of the Company that is not a Domestic Subsidiary.

"GAAP" means generally accepted accounting principles set forth in the

opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect on the Issuance Date. For purposes of this Indenture, the term "consolidated" with respect to any Person shall mean such Person consolidated with its Restricted Subsidiaries and shall not include any Unrestricted Subsidiary.

"Gaming Authority" means any agency, authority, board, bureau, commission, department, office or instrumentality of any nature whatsoever of the United States or other national government, any state, province or any city or other political subdivision, including without limitation, the State of Nevada, whether now or hereafter existing, or any officer or official thereof and any other agency with authority thereof to regulate any gaming operation (or proposed gaming operation) owned, managed or operated by the Principal, its Related Parties, the Company or any of their respective Subsidiaries or Affiliates.

"Gaming Law" means any gaming law or regulation of any jurisdiction or jurisdictions to which the Company or any of their Subsidiaries is, or may at any time after the issue date be, subject.

"Gaming License" means every license, franchise or other authorization required to own, lease, operate or otherwise conduct activities of the Company or any of the Restricted Subsidiaries, including without limitation, all such licenses granted under Nevada law, and the regulations promulgated in connection therewith, and other applicable national, provincial, or local laws.

"Global Note Legend" means the legend set forth in Section 2.06(g)(2), which is required to be placed on all Global Notes issued under this Indenture.

"Global Notes" means, individually and collectively, each of the Restricted Global Notes and the Unrestricted Global Notes deposited with or on behalf of and registered in the name of the Depository or its nominee, substantially in the form of Exhibit A1 hereto and that bears the Global Note Legend and that has the "Schedule of Exchanges of Interests in the Global Note" attached thereto, issued in accordance with Section 2.01, 2.06(b)(3), 2.06(b)(4), 2.06(d)(2) or 2.06(f) hereof.

"Government Instrumentality" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, court, tribunal, commission, bureau or entity or any arbitrator with authority to bind a party at law.

"Government Securities" means securities that are (1) direct obligations of the United States of America for the timely payment of which its full faith and credit is pledged or (2) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case, are not callable or redeemable at the option of ACEP thereof, and shall also include a depository receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act), as custodian with respect to any such Government Security or a specific payment of principal of or interest on any such Government Security held by such custodian for the account of the holder of such depository receipt; provided, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Security or the specific payment of principal of or interest on the Government Security evidenced by such depository receipt.

"Guarantee" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including, without limitation, by way of a pledge of assets or through letters of credit or reimbursement agreements in respect thereof), of all or any part of any Indebtedness (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take or pay or to maintain financial statement conditions or otherwise).

"Guarantor" means any Subsidiary of the Company that executes a Note Guarantee in accordance with the provisions of this Indenture, and their respective successors and assigns.

"Hedging Obligations" means, with respect to any specified Person, the obligations of such Person under:

(1) interest rate swap agreements (whether from fixed to floating or from floating to fixed), interest rate cap agreements and interest rate collar agreements;

(2) other agreements or arrangements designed to manage interest rates or interest rate risk; and

(3) other agreements or arrangements designed to protect such Person against fluctuations in currency exchange rates or commodity prices.

"Holder" means a Person in whose name a Note is registered.

"IAI Global Note" means a Global Note substantially in the form of Exhibit A1 hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee that will be issued in a denomination equal to the outstanding principal amount of the Notes sold to Institutional Accredited Investors.

"Indebtedness" means, with respect to any specified Person, any indebtedness of such Person (excluding accrued expenses and trade payables), whether or not contingent:

(1) in respect of borrowed money;

(2) evidenced by bonds, notes, debentures or similar instruments or letters of credit (or reimbursement agreements in respect thereof);

(3) in respect of banker's acceptances;

(4) representing Capital Lease Obligations or Attributable Debt in respect of sale and leaseback transactions;

(5) representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; or

(6) representing any Hedging Obligations,

if and to the extent any of the preceding items (other than letters of credit, Attributable Debt and Hedging Obligations) would appear as a liability upon a balance sheet of the specified Person prepared in accordance with GAAP. In addition, the term "Indebtedness" includes all Indebtedness of others secured by a Lien on any asset of the specified Person (whether or not such Indebtedness is assumed by the specified Person) and, to the extent not otherwise included, the Guarantee by the specified Person of any Indebtedness of any other Person.

The amount of any Indebtedness outstanding as of any date shall be (a) the accreted value thereof, in the case of any Indebtedness with original issue discount, and (b) the principal amount thereof, together with any interest thereon that is more than 30 days past due, in the case of any other Indebtedness. Notwithstanding anything in this Indenture to the contrary, Indebtedness of ACEP and the Restricted Subsidiaries shall not include any Indebtedness that has been either satisfied and discharged or defeased through covenant defeasance or legal defeasance.

"Indenture" means this Indenture, as amended or supplemented from time to time.

"Independent Financial Advisor" means an accounting, appraisal or investment banking or financial advisory firm of internationally recognized standing that is not an Affiliate of the Company, the Principal or its Related Parties.

"Indirect Participant" means a Person who holds a beneficial interest in a Global Note through a Participant.

"Initial Notes" means the first $215,000,000 aggregate principal amount of Notes issued under this Indenture on the date hereof.

"Initial Purchaser" means Bear, Stearns & Co. Inc.

"Institutional Accredited Investor" means an institution that is an "accredited investor" as defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act, who are not also QIBs.

"Intercreditor Agreement" means the Intercreditor Agreement, dated as of the date hereof, among the Collateral Agent, if any, Bear Stearns Corporate Lending Inc., as agent acting on behalf of the other lenders pursuant to the Bank Credit Facility and the Trustee, acting on behalf of the Holders of the Notes, as amended, revised, modified or restated from time to time in accordance with its terms.

"Interest Top-Off Failure" means the failure to maintain funds in the Note Proceeds Account sufficient to pay the Special Redemption Price in full at an assumed redemption date that is 32 days following any date (but not later than September 2, 2004).

"Investments" means, with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including Guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business and excluding accounts receivables created or acquired in the ordinary course of business), purchases or other acquisitions, for cash or property, of Indebtedness, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP; notwithstanding the foregoing, the right of any Person to receive payment based upon Financing Participations to the extent made in the ordinary course of business shall not be deemed to be an Investment. If ACEP or any Subsidiary of ACEP sells or otherwise disposes of any Equity Interests of any direct or indirect Subsidiary of ACEP such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary of ACEP, ACEP shall be deemed to have made an Investment on the date of any such sale or disposition equal to the Fair Market Value of ACEP's Investments in such Subsidiary that were not sold or disposed of in an amount determined as provided in Section 4.07(d). The acquisition by ACEP or any Subsidiary of ACEP of a Person that holds an Investment in a third Person will be deemed to be an Investment by ACEP or such Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person in an amount determined as provided in Section 4.07(d). Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value.

"Issuance Date" means the closing date for the sale and original issuance of the Notes.

"Legal Holiday" means a Saturday, a Sunday or a day on which banking institutions in the City of New York or at a place of payment are authorized by law, regulation or executive order to remain closed. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue on such payment for the intervening period.

"Lenders" means any of the lenders under the Bank Credit Facility.

"Letter of Transmittal" means the letter of transmittal to be prepared by the Company and sent to all Holders of the Notes for use by such Holders in connection with the Exchange Offer.

"Lien" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction.

"Liquidated Damages" means all liquidated damages then owing pursuant to Section 5 of the Registration Rights Agreement.

"Material Gaming License" means any Gaming License that the loss, suspension, revocation, termination or material impairment of which, individually or in the aggregate, would materially adversely affect any Property and such Property is the principal asset of a Significant Subsidiary or if such Property (considered separately) would constitute a Significant Subsidiary if it were the only asset in a Significant Subsidiary.

"Net Asset Sale Proceeds" means the aggregate cash proceeds received by ACEP or any of the Restricted Subsidiaries in respect of any Asset Sale, net of the direct costs relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees and expenses, consent fees, employee severance and termination costs, any trade payables or similar liabilities related to the assets sold and required to be paid by the seller as a result thereof and sales, finder's or broker's commissions), and any relocation expenses incurred as a result thereof, taxes paid or payable as a result thereof (including, without limitation, any taxes paid or payable by an owner of ACEP or any Restricted Subsidiary), amounts required to be applied to the repayment of Indebtedness secured by a Lien that ranks prior to the Lien securing the Notes on the asset or assets that are the subject of such Asset Sale, all distributions and other payments required to be made to minority interest holders in a subsidiary or joint venture as a result of the Asset Sale, any reserve for adjustment in respect of the sale price of such asset or assets or any liabilities associated with the asset disposed of in such Asset Sale and the deduction of appropriate amounts provided by the seller as a reserve in accordance with GAAP against any liabilities associated with the assets disposed of in the Asset Sale and retained by ACEP or any Restricted Subsidiary after that Asset Sale.

"Net Income" means, with respect to any specified Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however:

(1) any gain (but not loss), together with any related provision for taxes on such gain (but not loss), realized in connection with:

(a) any Asset Sale; or

(b) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Indebtedness of such Person or any of its Restricted Subsidiaries;

(2) any extraordinary gain (but not loss), together with any related provision for taxes on such extraordinary gain (but not loss);

(3) any interest expense from Permitted Affiliate Subordinated Indebtedness, whether paid or accrued; and

(4) any payments pursuant to the Tax Allocation Agreement.

"Net Loss Proceeds" means the aggregate cash proceeds received by ACEP or any of the Restricted Subsidiaries in respect of any Event of Loss, including, without limitation, insurance proceeds, condemnation awards or damages awarded by any judgment, net of the direct costs in recovery of such Net Loss Proceeds (including, without limitation, legal, accounting, appraisal and insurance adjuster fees and expenses), amounts required to be applied to the repayment of Indebtedness secured by a Lien on the asset or assets that were the subject of such Event of Loss and any taxes paid or payable as a result thereof (including, without limitation, any taxes paid or payable by an owner of ACEP or any Restricted Subsidiary).

"Nevada Gaming Authorities" means the Nevada State Gaming Control Board, the Nevada Gaming Commission, Clark County, Nevada and the City of Las Vegas, Nevada.

"Non-Recourse Debt" means Indebtedness or Disqualified Stock, as the case may be, or that portion of Indebtedness or Disqualified Stock, as the case may be:

(1) as to which neither ACEP nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness), or (b) is directly or indirectly liable as a guarantor or otherwise;

(2) no default with respect to which (including any rights that the holders of the Indebtedness may have to take enforcement action against an Unrestricted Subsidiary) would permit upon notice, lapse of time or both any holder of any other Indebtedness of ACEP or any of its Restricted Subsidiaries to declare a default on such other Indebtedness or cause the payment of the Indebtedness to be accelerated or payable prior to its Stated Maturity; and

(3) as to which the lenders have been notified in writing that they will not have any recourse to the stock or assets of ACEP or any of its Restricted Subsidiaries.

"Non-Recourse Financing" means Indebtedness incurred in connection with the construction, purchase or lease of personal or real property or equipment (1) as to which the lender upon default may seek recourse or payment against ACEP or any Restricted Subsidiary only through the return or foreclosure or sale of the property or equipment so constructed, purchased or leased and to any proceeds of such property and Indebtedness and the related collateral account in which such proceeds are held and (2) may not otherwise assert a valid claim for payment on such Indebtedness against ACEP or any Restricted Subsidiary or any other property of ACEP or any Restricted Subsidiary except in each case in the case of fraud and other customary non-recourse exceptions.

"Non-U.S. Person" means a Person who is not a U.S. Person.

"Note Collateral" means all assets, now owned or hereafter acquired, of ACEP or any Guarantor, defined as Collateral in the Collateral Documents.

"Note Guarantee" means the Guarantee of the Notes by a Guarantor.

"Note Proceeds Account" means the Account (as defined in the Escrow Agreement).

"Notes" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes, the Exchange Notes and the Additional Notes shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes shall include the Initial Notes, the Exchange Notes and any Additional Notes.

"Obligations" means any principal, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness.

"Offering Memorandum" means the Company's offering memorandum, dated January 15, 2004, relating to the issuance of the Notes.

"Officer" means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of such Person.

"Officers' Certificate" means a certificate signed on behalf of ACEP, ACEP Finance or a Guarantor, as the case may be, by two Officers (or if a limited liability company, two Officers of the managing member of such limited liability company) of ACEP, ACEP Finance or a Guarantor, as the case may be, one of whom must be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of ACEP, ACEP Finance or a Guarantor, as the case may be, that meets the requirements of Section 13.05

hereof.

"Opinion of Counsel" means an opinion from legal counsel who is reasonably acceptable to the Trustee, that meets the requirements of Section 13.05 hereof. The counsel may be an employee of or counsel to the Company, any Subsidiary of the Company or the Trustee.

"Other Liquidated Damages" means liquidated damages arising from a registration default under a registration rights agreement with respect to the registration of subordinated Indebtedness permitted pursuant to the terms of this Indenture.

"Parent" means AREP, AREH and/or American Entertainment Properties Corp.

"Participant" means, with respect to the Depositary, Euroclear or Clearstream, a Person who has an account with the Depositary, Euroclear or Clearstream, respectively (and, with respect to DTC, shall include Euroclear and Clearstream).

"Permitted Affiliate Subordinated Indebtedness" means any Indebtedness of ACEP or any of the Restricted Subsidiaries to an Affiliate of ACEP other than a Subsidiary of ACEP (1) for which no installment of principal or installment of interest may be made if a Default or Event of Default exists or is continuing (except that interest may accrue on Permitted Affiliate Subordinated Indebtedness or be paid in the form of additional Permitted Affiliate Subordinated Indebtedness or Capital Stock of ACEP that is not Disqualified Stock), (2) for which no installment of principal matures earlier than the date that is three months after the final maturity date of the Notes, (3) for which the payment of principal and interest is subordinated in right of payment to the Notes or any Note at least to the extent set forth in Appendix A-2 hereto and (4) under which no interest, premium or penalty is due or payable (other than interest, premium and penalty payable in the form of additional Permitted Affiliate Subordinated Indebtedness or Capital Stock of ACEP that is not Disqualified Stock and except that interest may accrue on Permitted Affiliate Subordinated Indebtedness) unless such amount may be paid as a Restricted Payment.

"Permitted Investments" means:

(1) any Investments in ACEP, or any Guarantor or in any Restricted Subsidiary that is not a Guarantor if the Investments in such Restricted Subsidiary that is not a Guarantor from ACEP, any Guarantor or any of the other Restricted Subsidiaries aggregate less than $1.0 million;

(2) any Investments in Cash Equivalents;

(3) Investments by ACEP or any Restricted Subsidiary of ACEP in a Person, if as a result of such Investment (a) such Person becomes a Guarantor or (b) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, one of ACEP or a Guarantor;

(4) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale or an Event of Loss that was made pursuant to and in compliance with Section 4.10 or Section 4.16, as applicable;

(5) any acquisition of assets or Capital Stock solely in exchange for the issuance of Equity Interests (other than Disqualified Stock) of ACEP;

(6) receivables owing to ACEP or any Restricted Subsidiary if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; provided, however, that such trade terms may include such concessionary trade terms as ACEP or any such Restricted Subsidiary deems reasonable under the circumstances;

(7) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;

(8) loans or advances to employees, former employees or directors of ACEP or the Restricted Subsidiaries (a) to fund the exercise price of options granted

under the employment agreements or ACEP's stock option plans or agreements, in each case, as approved by ACEP's Board of Directors or (b) for any other purpose not to exceed $2.0 million in the aggregate at any one time outstanding under this clause (b);

(9) Investments received (a) in settlement of debts created in the ordinary course of business and owing to ACEP and any Restricted Subsidiary (including gaming debts in the ordinary course of business owed by a patron or pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer), (b) in satisfaction of judgments or (c) settlement of litigation, arbitrations or other disputes;

(10) Investments in any person engaged in the Principal Business which Investment is made by the issuance of Equity Interests (other than Disqualified Stock) of ACEP;

(11) any Investments having an aggregate Fair Market Value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this clause (11) since the Issuance Date not to exceed the sum of $20.0 million, plus the amount of cash repaid on any loan made pursuant to this clause (11) not to exceed the respective original principal amounts of such loans;

(12) any grant to any Subsidiary of ACEP of gaming or other rights derivative of any Material Gaming License;

(13) Investments represented by Hedging Obligations;

(14) any Investments or loans made to third parties in connection with such third parties' build out and development of property located at any of the Properties not to exceed $10.0 million in the aggregate at any one time outstanding;

(15) repurchases of the Notes; and

(16) Investments existing on the Issuance Date and any Investments of the funds in the Note Proceeds Account in accordance with the investment limitations in the Escrow Agreement.

"Permitted Liens" means:

(1) Liens in favor of the Company or any Guarantor; provided that if such Liens are on any Note Collateral, that such Liens are either collaterally assigned to the Trustee or a Collateral Agent for the Trustee or subordinate to the Lien in favor of the Trustee securing the Notes or any Note Guarantee;

(2) Liens on property of a Person existing at the time such Person became a Restricted Subsidiary, is merged into or consolidated with or into, or wound up into, one of ACEP or any Restricted Subsidiary of ACEP; provided, that such Liens were in existence prior to the consummation of, and were not entered into in contemplation of, such merger or consolidation or winding up and do not extend to any other assets other than those of the Person acquired by, merged into or consolidated with one of ACEP or such Restricted Subsidiary;

(3) Liens on property existing at the time of acquisition thereof by ACEP or any Restricted Subsidiary of ACEP; provided that such Liens were in existence prior to the consummation of, and were not entered into in contemplation of, such acquisition;

(4) Liens to secure the performance of statutory obligations, surety or appeal bonds, performance bonds or other obligations of a like nature incurred in the ordinary course of business and in the improvement or repair of any of the Properties and which obligations are not expressly prohibited by this Indenture; or if such Lien arises in the ordinary course of business and in the improvement or repair of any of the Properties, which ACEP shall have bonded within a reasonable time after becoming aware of the existence of such Lien subject to customary rights of set off upon deposit of cash in favor of a bank or other depositary institution in which such cash is maintained in the ordinary course of business;

(5) Liens securing obligations in respect of this Indenture, the Notes,

including Additional Notes, and any Note Guarantee;

(6) Liens on assets that are not part of the Note Collateral to secure Indebtedness (including Guarantees) permitted pursuant to Section 4.09; provided, that such Indebtedness is not contractually subordinated in right of payment to the Notes;

(7) (a) Liens for taxes, assessments or governmental charges or claims or (b) statutory Liens of landlords, and carriers, warehousemen, mechanics, suppliers, material men, repairmen or other similar Liens arising in the ordinary course of business or in the improvement or repair of any of the Properties, in the case of each of (a) and (b), with respect to amounts that either (i) are not yet delinquent or (ii) are

being contested in good faith by appropriate proceedings as to which appropriate reserves or other provisions have been made in accordance with GAAP;

(8) easements, rights-of-way, aviational or navigational servitudes, restrictions, minor defects or irregularities in title and other similar charges or encumbrances which do not interfere in any material respect with the ordinary conduct of business of ACEP and the Restricted Subsidiaries;

(9) leases or a leasehold mortgage in favor of a party financing the lease of space, including, without limitation, construction or improvements thereto within a Property; provided that (a) such lease or the lease affected by such leasehold mortgage is permitted pursuant to Section 4.21, (b) neither ACEP nor any Restricted Subsidiary is liable for the payment of any principal of, or interest or premium on, such financing and (c) the affected lease and leasehold mortgage are expressly made subject and subordinate to the Lien of the Deed of Trust, subject to Section 4.21(c);

(10) Liens securing all Obligations under the Credit Facilities incurred pursuant to clause (1) or (15) of Section 4.09(b), which Liens may be senior in right of payment to the Liens securing the obligations under the Notes pursuant to the terms of the Intercreditor Agreement;

(11) Liens incurred in connection with Hedging Obligations permitted to be incurred under this Indenture, including first-priority Liens on the Note Collateral if the underlying obligations subject to the Hedging Obligations are secured by a first-priority Lien on the Note Collateral or second-priority Liens on the Note Collateral if the underlying obligations subject to the Hedging Obligations are secured by second-priority Liens on the Note Collateral;

(12) licenses of patents, trademarks and other intellectual property rights granted by ACEP or any Restricted Subsidiary of ACEP in the ordinary course of business and not interfering in any material respect with the ordinary conduct of the business of such ACEP or such Restricted Subsidiary;

(13) any judgment attachment or judgment Lien not constituting an Event of Default;

(14) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(15) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance and other types of social security, or to secure performance of tenders, bids, leases, statutory obligations, surety and appeal bonds, government contracts, trade contracts performance and return of money bonds and other obligation of a like nature incurred in the ordinary course;

(16) Liens arising from filing financing statements or other instruments or documents relating to leases;

(17) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(18) Liens on the assets of ACEP or any of the Restricted Subsidiaries incidental to the conduct of their respective businesses or the ownership of

their respective Properties which were not created in connection with the incurrence of Indebtedness or the obtaining of advances or credit and which do not in the aggregate materially detract from the value or saleability of their respective Properties or materially impair the use thereof in the operation of their respective businesses;

(19) Liens to secure Indebtedness permitted pursuant to Section 4.09(b)(11) and extending only to the personal or real property as purchased or leased; provided, however, that, such Lien does not extend over the real property secured under the Deeds of Trust;

(20) Liens to secure Indebtedness permitted pursuant to Section 4.09(b)(13) and Section 4.09(b)(15); provided that the Notes will be secured equally and ratably by a pari passu Lien ranking equally in priority on any collateral subject to the Liens permitted by this clause (20);

(21) Liens to secure any Permitted Refinancing Indebtedness permitted by the terms of this Indenture; provided, however, that:

(a) the new Lien shall be limited to all or part of the same property and assets that secured or, under the written agreements pursuant to which the original Lien arose, could secure the original Lien (plus improvements and accessions to, such property or proceeds or distributions thereof) and the priority of the new Lien with respect to the Lien securing the obligations under the Notes is no greater than the priority of the Lien securing the Indebtedness so refinanced;

(b) the Indebtedness secured by the new Lien is not increased to any amount greater than the sum of (x) the outstanding principal amount, or, if greater, committed amount, of the Permitted Refinancing Indebtedness and (y) an amount necessary to pay any fees and expenses, including premiums, related to such renewal, refunding, refinancing, replacement, defeasance or discharge; and

(c) the Indebtedness secured by the new Lien is subject to and bound by the Intercreditor Agreement;

(22) Liens to secure a deposit or deposits in connection with workers' compensation obligations or requirements, provided that such deposit or deposits do not exceed $1.0 million in the aggregate; and

(23) Liens incurred in the ordinary course of business of ACEP or any Subsidiary of ACEP with respect to obligations that do not exceed $5.0 million at any one time outstanding.

"Permitted Payments to Parent" means, without duplication as to amounts:

(1) payments to the Parent not to exceed $100,000 per annum; and

(2) payments pursuant to the Tax Allocation Agreement.

"Permitted Refinancing Indebtedness" means any Indebtedness of ACEP or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to renew, refund, refinance, replace, defease or discharge other Indebtedness of ACEP or any of its Restricted Subsidiaries (other than intercompany Indebtedness); provided that:

(1) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, and Other Liquidated Damages, incurred in connection therewith);

(2) in the case of Indebtedness other than First Lien Obligations or Notes redeemed in accordance with Section 3.08, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted

Average Life to Maturity of, the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(3) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness has a final maturity date later than the final maturity date of, and is subordinated in right of payment to, the Notes on terms at least as favorable to the holders of Notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(4) such Indebtedness is incurred either by ACEP or by the Restricted Subsidiary who is the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged;

(5) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged are First Lien Obligations and secured by any part of the Note Collateral, such Permitted Refinancing Indebtedness may be First Lien Obligations or Indebtedness secured by a Lien ranking equally and ratably with the Lien securing the Notes, provided that such Permitted Refinancing Indebtedness is subject to and bound by the appropriate Intercreditor Agreement, or shall be unsecured Indebtedness;

(6) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is Indebtedness secured by a Lien ranking equally and ratably with the Lien securing the Notes and secured by any part of the Note Collateral, such Permitted Refinancing Indebtedness may be secured by a Lien ranking equally and ratably with the Lien securing the Notes, provided that such Permitted Refinancing Indebtedness is subject to and bound by the appropriate Intercreditor Agreement, or shall be unsecured Indebtedness; and

(7) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is Indebtedness secured by a Permitted Lien on collateral that is not Note Collateral, then such Permitted Refinancing Indebtedness may be secured by a Lien on such other collateral.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

"Pledge and Security Agreement" means the Pledge and Security Agreement, to be dated as of the Acquisition Date, as such agreement may be amended, modified or supplemented from time to time.

"Preferred Stock" means any Equity Interest with preferential right of payment of dividends or upon liquidation, dissolution, or winding up.

"Principal" means AREP.

"Principal Business" means the casino gaming, hotel, retail, conference center and entertainment mall and resort business (including, without limitation, the business contemplated by the Properties in the Offering Memorandum) and any activity or business incidental, directly related or similar thereto (including owning interests in Subsidiaries, operating a conference center and meeting facilities and owning and operating or licensing the operation of a retail and entertainment facilities), or any business or activity that is a reasonable extension, development or expansion thereof or ancillary thereto.

"Private Placement Legend" means the legend set forth in Section 2.06(g)(1) to be placed on all Notes issued under this Indenture except where otherwise permitted by the provisions of this Indenture.

"Project Assets" means, at any time, all of the assets then in use on the Properties including any real estate assets, any buildings or improvements thereon, and all equipment, furnishings and fixtures, but excluding: (1) any obsolete property determined by ACEP's Board of Directors to be no longer useful or necessary to the operations or support of such Property and (2) any personal property leased from a third party in the ordinary course of business.

"Properties" means the Stratosphere, Arizona Charlie's Decatur and Arizona Charlie's Boulder. A "Property" means any of the foregoing Properties and other properties that may be acquired.

"Property Improvement" means any improvement to, or addition or acquisition or construction of, the property, plant or equipment of any of the Properties, or any other property for the benefit of any of the Properties, including any land acquisition costs, financing costs, planning or development costs, construction costs, ancillary costs, fees and expenses.

"QIB" means a "qualified institutional buyer" as defined in Rule 144A.

"Registration Rights Agreement" means the Registration Rights Agreement, dated as of the date of this Indenture, among the Company and the other parties named on the signature pages thereof, as such agreement may be amended, modified or supplemented from time to time and, with respect to any Additional Notes, one or more registration rights agreements among the Company, the Guarantors and the other parties thereto, as such agreement(s) may be amended, modified or supplemented from time to time, relating to rights given by the Company to the purchasers of Additional Notes to register such Additional Notes under the Securities Act.

"Regulation S" means Regulation S promulgated under the Securities Act.

"Regulation S Global Note" means a Regulation S Temporary Global Note or Regulation S Permanent Global Note, as appropriate.

"Regulation S Permanent Global Note" means a permanent Global Note in the form of Exhibit A1 hereto bearing the Global Note Legend and the Private Placement Legend and deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Regulation S Temporary Global Note upon expiration of the Restricted Period.

"Regulation S Temporary Global Note" means a temporary Global Note in the form of Exhibit A3 hereto deposited with or on behalf of and registered in the name of the Depositary or its nominee, issued in a denomination equal to the outstanding principal amount of the Notes initially sold in reliance on Rule 903 of Regulation S.

"Related Parties" means (1) Carl Icahn, any spouse and any child, stepchild, sibling or descendant of Carl Icahn, (2) any estate of the Carl Icahn or any person under clause (1), (3) any person who receives a beneficial interest in the Principal from any estate under clause (2) to the extent of such interest, (4) any executor, personal administrator or trustee who holds such beneficial interest in ACEP for the benefit of, or as fiduciary for, any person under clauses (1), (2) or (3) to the extent of such interest, (5) any corporation, partnership, limited liability company, trust, or similar entity, directly or indirectly owned or controlled by Carl Icahn or any other person or persons identified in clauses (1) or (2).

"Release Condition" means any of the conditions for the release of the funds from the Note Proceeds Account to the Company as set forth in Section 10(a) of the Escrow Agreement.

"Responsible Officer," when used with respect to the Trustee, means any officer within the Corporate Trust Administration of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Restricted Definitive Note" means a Definitive Note bearing the Private Placement Legend.

"Restricted Global Note" means a Global Note bearing the Private Placement Legend.

"Restricted Investment" means an Investment other than a Permitted

Investment.

"Restricted Period" means the 40-day distribution compliance period as defined in Regulation S.

"Restricted Subsidiary" means, at any time, any direct or indirect Subsidiary of ACEP that is not then an Unrestricted Subsidiary; provided, however, that upon the occurrence of any Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of "Restricted Subsidiary."

"Rule 144" means Rule 144 promulgated under the Securities Act.

"Rule 144A" means Rule 144A promulgated under the Securities Act.

"Rule 903" means Rule 903 promulgated under the Securities Act.

"Rule 904" means Rule 904 promulgated under the Securities Act.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

"Securities Intermediary" means Fleet National Bank, as securities intermediary under the Escrow Agreement.

"Shelf Registration Statement" means the Shelf Registration Statement as defined in the Registration Rights Agreement.

"Significant Subsidiary" means any Subsidiary which would be a "significant subsidiary" as defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as such Regulation is in effect on the date of the Issuance Date.

"Stated Maturity" means, with respect to any installment of interest or principal on any series of Indebtedness, the date on which such payment of interest or principal was scheduled to be paid in the original documentation governing such Indebtedness, and shall not include any contingent obligations to repay, redeem or repurchase any such interest, accreted value or principal prior to the date originally scheduled for the payment or accretion thereof.

"Stratosphere" means that certain hotel, casino and tower located on approximately 31 acres at 2000 Las Vegas Boulevard South, Las Vegas, Nevada, together with all other improvements (including any buildings) and property thereon.

"Subordinated Indebtedness" means any Indebtedness that by its terms is expressly subordinated in right of payment in any respect (either in the payment of principal or interest) to the payment of principal, Liquidated Damages or interest on the Notes.

"Subsidiary" means, with respect to any specified Person:

(1) any corporation, association or other business entity of which more than 50% of the total Voting Stock is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person (or a combination thereof); and

(2) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

"Tax Allocation Agreement" means that certain tax allocation agreement to be entered into among American Entertainment Properties Corp., ACEP and the Subsidiaries of ACEP.

"TIA" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb) as in effect on the date on which this Indenture is qualified thereunder.

"Trustee" means the party named as such in the preamble to this Indenture until a successor replaces it in accordance with the applicable provisions of this Indenture and thereafter means the successor serving hereunder.

"Unrestricted Global Note" means a Global Note that does not bear and is not required to bear the Private Placement Legend.

"Unrestricted Definitive Note" means a Definitive Note that does not bear and is not required to bear the Private Placement Legend.

"Unrestricted Subsidiary" means any Subsidiary of ACEP (other than any Subsidiary that owns Project Assets) that is designated by the Board of Directors of ACEP as an Unrestricted Subsidiary pursuant to a resolution of the Board of Directors, but only to the extent that such Subsidiary:

(1) has no Indebtedness other than Non-Recourse Debt;

(2) except as permitted by Section 4.11 hereof, is not party to any agreement, contract, arrangement or understanding with ACEP or any Restricted Subsidiary of ACEP unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to ACEP or such Restricted Subsidiary than those that might be obtained at the time from Persons who are not Affiliates of ACEP;

(3) is a Person with respect to which neither ACEP nor any of its Restricted Subsidiaries has any direct or indirect obligation (a) to subscribe for additional Equity Interests or (b) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results; and

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Indebtedness of the Company or any of its Restricted Subsidiaries.

"U.S. Person" means a U.S. Person as defined in Rule 902(k) promulgated under the Securities Act.

"Voting Stock" means, with respect to any Person that is a corporation, any class or series of capital stock of such Person that is ordinarily entitled to vote in the election of directors thereof at a meeting of stockholders called for such purpose, without the occurrence of any additional event or contingency and with respect to any other Person that is a limited liability company, membership interests entitled to manage the operations or business of the limited liability company.

"Weighted Average Life to Maturity" means, when applied to any Indebtedness or Disqualified Stock, as the case may be, at any date, the number of years (calculated to the nearest one-twelfth) obtained by dividing:

(1) the sum of the products obtained by multiplying (x) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal or liquidation preference, including payment at final maturity, in respect thereof, by (y) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(2) the then outstanding principal amount or liquidation preference, as applicable, of such Indebtedness or Disqualified Stock, as the case may be.

"Wholly-Owned Restricted Subsidiary" of any specified Person means a Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) shall at the time be owned by such Person or by one or more Wholly-Owned Restricted Subsidiaries of such Person

Section 1.02 Other Definitions.

Defined in

Term	Section
"Affiliate Transaction"	4.11
"Application Date"	3.08
"Asset Sale Offer"	3.11
"Authentication Order"	2.02
"Calculation Date"	1.01
"Change of Control Offer"	4.15
"Change of Control Payment"	4.15
"Change of Control Payment Date"	4.15
"Covenant Defeasance"	8.03
"DTC"	2.03
"Escrow Break Date"	3.09
"Event of Default"	6.01
"Event of Loss Offer"	4.16
"Event of Loss Offer Amount"	3.12
"Event of Loss Offer Period"	3.12
"Event of Loss Purchase Date"	3.12
"Excess Loss Proceeds"	4.16
"Excess Proceeds"	4.10
"incur"	4.09
"Lease Transaction"	4.21

Term	Defined in Section
"Legal Defeasance"	8.02
"Offer Amount"	3.11
"Offer Period"	3.11
"Paying Agent"	2.03
"Permitted Debt"	4.09
"Payment Default"	6.01
"Purchase Date"	3.11
"Redemption Date"	3.07
"Registrar"	2.03
"Restricted Payments"	4.07
"Special Redemption Price"	3.09
"Subject Property"	4.16

Section 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture.

The following TIA terms used in this Indenture have the following meanings:

"indenture securities" means the Notes;

"indenture security Holder" means a Holder of a Note;

"indenture to be qualified" means this Indenture;

"indenture trustee" or "institutional trustee" means the Trustee; and

"obligor" on the Notes and the Note Guarantees means the Company and the Guarantors, respectively, and any successor obligor upon the Notes and the Note Guarantees, respectively.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA have the meanings so assigned to them.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

(1) a term has the meaning assigned to it;

(2) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;

(3) "or" is not exclusive;

(4) words in the singular include the plural, and in the plural include the singular;

(5) "will" shall be interpreted to express a command;

(6) provisions apply to successive events and transactions; and

(7) references to sections of or rules under the Securities Act will be deemed to include substitute, replacement of successor sections or rules adopted by the SEC from time to time.

ARTICLE 2.
THE NOTES

Section 2.01 Form and Dating.

(a) General. The Notes and the Trustee's certificate of authentication will be substantially in the form of Exhibit A hereto. The Notes may have notations, legends or endorsements required by law, stock exchange rule or usage. Each Note will be dated the date of its authentication. The Notes shall be in denominations of $1,000 and integral multiples thereof.

The terms and provisions contained in the Notes will constitute, and are hereby expressly made, a part of this Indenture and the Company, the Guarantors and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent any provision of any Note conflicts with the express provisions of this Indenture, the provisions of this Indenture shall govern and be controlling.

(b) Global Notes. Notes issued in global form will be substantially in the form of Exhibits A1 or A3 attached hereto (including the Global Note Legend thereon and the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Notes issued in definitive form will be substantially in the form of Exhibit A1 attached hereto (but without the Global Note Legend thereon and without the "Schedule of Exchanges of Interests in the Global Note" attached thereto). Each Global Note will represent such of the outstanding Notes as will be specified therein and each shall provide that it represents the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges and redemptions. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the aggregate principal amount of outstanding Notes represented thereby will be made by the Trustee or the Custodian, at the direction of the Trustee, in accordance with instructions given by the Holder thereof as required by Section 2.06 hereof.

(c) Temporary Global Notes. Notes offered and sold in reliance on Regulation S will be issued initially in the form of the Regulation S Temporary Global Note, which will be deposited on behalf of the purchasers of the Notes represented thereby with the Trustee, at its New York office, as custodian for the Depositary, and registered in the name of the Depositary or the nominee of the Depositary for the accounts of designated agents holding on behalf of Euroclear or Clearstream, duly executed by the Company and authenticated by the Trustee as hereinafter provided. The Restricted Period will be terminated upon the receipt by the Trustee of:

(1) a written certificate from the Depositary, together with copies of certificates from Euroclear and Clearstream certifying that they have received certification of non-United States beneficial ownership of 100% of the aggregate principal amount of the Regulation S Temporary Global Note (except to the extent of any beneficial owners thereof who acquired an interest therein during the Restricted Period pursuant to another exemption from registration under the Securities Act and who will take delivery of a beneficial ownership interest in a 144A Global Note or

an IAI Global Note bearing a Private Placement Legend, all as contemplated by Section 2.06(b) hereof); and

(2) an Officers' Certificate from the Company.

Following the termination of the Restricted Period, beneficial interests in the Regulation S Temporary Global Note will be exchanged for beneficial interests in Regulation S Permanent Global Note pursuant to the Applicable Procedures. Simultaneously with the authentication of Regulation S Permanent Global Note, the Trustee will cancel the Regulation S Temporary Global Note. The aggregate principal amount of the Regulation S Temporary Global Note and the Regulation S Permanent Global Note may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee, as the case may be, in connection with transfers of interest as hereinafter provided.

(3) Euroclear and Clearstream Procedures Applicable. The provisions of the "Operating Procedures of the Euroclear System" and "Terms and Conditions Governing Use of Euroclear" and the "General Terms and Conditions of Clearstream Banking" and "Customer Handbook" of Clearstream will be applicable to transfers of beneficial interests in the Regulation S Temporary Global Note and the Regulation S Permanent Global Note that are held by Participants through Euroclear or Clearstream.

Section 2.02 Execution and Authentication.

At least one Officer must sign the Notes for the Company by manual or facsimile signature.

If an Officer whose signature is on a Note no longer holds that office at the time a Note is authenticated, the Note will nevertheless be valid.

A Note will not be valid until authenticated by the manual signature of the Trustee. The signature will be conclusive evidence that the Note has been authenticated under this Indenture.

The Trustee will, upon receipt of a written order of the Company signed by two Officers (an "Authentication Order"), authenticate Notes for original issue up to the aggregate principal amount stated set forth in such Authentication Order. The aggregate principal amount of Notes outstanding at any time may not exceed the aggregate amount of Notes authenticated for original issue pursuant to all Authentication Orders issued by the Company except as provided in Section 2.07 hereof.

The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. An authenticating agent may authenticate Notes whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with Holders or an Affiliate of the Company.

Section 2.03 Registrar and Paying Agent.

The Company will maintain an office or agency where Notes may be presented for registration of transfer or for exchange ("Registrar") and an office or agency where Notes may be presented for payment ("Paying Agent"). The Registrar will keep a register of the Notes and of their transfer and exchange. The Company may appoint one or more co-registrars and one or more additional paying agents. The term "Registrar" includes any co-registrar and the term "Paying Agent" includes any additional paying agent. The Company may change any Paying Agent or Registrar without notice to any Holder. The Company will notify the Trustee in writing of the name and address of any Agent not a party to this Indenture. If the Company fails to appoint or maintain another entity as Registrar or Paying Agent, the Trustee shall act as such. The Company or any of its Subsidiaries may act as Paying Agent or Registrar.

The Company initially appoints The Depository Trust Company ("DTC") to act as Depositary with respect to the Global Notes.

The Company initially appoints the Trustee to act as the Registrar and Paying Agent and to act as Custodian with respect to the Global Notes.

Section 2.04 Paying Agent to Hold Money in Trust.

The Company will require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Trustee all money held by the Paying Agent for the payment of principal, premium or Liquidated Damages, if any, or interest on the Notes, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary) will have no further liability for the money. If the Company or a Subsidiary acts as Paying Agent, it will segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent. Upon any bankruptcy or reorganization proceedings relating to the Company, the Trustee will serve as Paying Agent for the Notes.

Section 2.05 Holder Lists.

The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of all Holders and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar, the Company will furnish to the Trustee at least seven Business Days before each interest payment date and at such other times as the Trustee may request in writing, a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of the Holders of Notes and the Company shall otherwise comply with TIA Section 312(a).

Section 2.06 Transfer and Exchange.

(a) Transfer and Exchange of Global Notes. A Global Note may not be transferred as a whole except by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or to another nominee of the Depositary, or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. All Global Notes will be exchanged by the Company for Definitive Notes if:

(1) the Company delivers to the Trustee notice from the Depositary that it is unwilling or unable to continue to act as Depositary or that it is no longer a clearing agency registered under the Exchange Act and, in either case, a successor Depositary is not appointed by the Company within 120 days after the date of such notice from the Depositary; or

(2) the Company in its sole discretion determines that the Global Notes (in whole but not in part) should be exchanged for Definitive Notes and delivers a written notice to such effect to the Trustee; provided that in no event shall the Regulation S Temporary Global Note be exchanged by the Company for Definitive Notes prior to (x) the expiration of the Restricted Period and (y) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act.

Upon the occurrence of either of the preceding events in (1) or (2) above, Definitive Notes shall be issued in such names as the Depositary shall instruct the Trustee. Global Notes also may be exchanged

or replaced, in whole or in part, as provided in Sections 2.07 and 2.10 hereof. Every Note authenticated and delivered in exchange for, or in lieu of, a Global Note or any portion thereof, pursuant to this Section 2.06 or Section 2.07 or 2.10 hereof, shall be authenticated and delivered in the form of, and shall be, a Global Note. A Global Note may not be exchanged for another Note other than as provided in this Section 2.06(a), however, beneficial interests in a Global Note may be transferred and exchanged as provided in Section 2.06(b), (c) or (f) hereof.

(b) Transfer and Exchange of Beneficial Interests in the Global Notes. The transfer and exchange of beneficial interests in the Global Notes will be effected through the Depositary, in accordance with the provisions of this

Indenture and the Applicable Procedures. Beneficial interests in the Restricted Global Notes will be subject to restrictions on transfer comparable to those set forth herein to the extent required by the Securities Act. Transfers of beneficial interests in the Global Notes also will require compliance with either subparagraph (1) or (2) below, as applicable, as well as one or more of the other following subparagraphs, as applicable:

(1) Transfer of Beneficial Interests in the Same Global Note. Beneficial interests in any Restricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in the same Restricted Global Note in accordance with the transfer restrictions set forth in the Private Placement Legend; provided, however, that prior to the expiration of the Restricted Period, transfers of beneficial interests in the Regulation S Temporary Global Note may not be made to a U.S. Person or for the account or benefit of a U.S. Person (other than an Initial Purchaser). Beneficial interests in any Unrestricted Global Note may be transferred to Persons who take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note. No written orders or instructions shall be required to be delivered to the Registrar to effect the transfers described in this Section 2.06(b)(1).

(2) All Other Transfers and Exchanges of Beneficial Interests in Global Notes. In connection with all transfers and exchanges of beneficial interests that are not subject to Section 2.06(b)(1) above, the transferor of such beneficial interest must deliver to the Registrar either:

(A) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to credit or cause to be credited a beneficial interest in another Global Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given in accordance with the Applicable Procedures containing information regarding the Participant account to be credited with such increase; or

(B) both:

(i) a written order from a Participant or an Indirect Participant given to the Depositary in accordance with the Applicable Procedures directing the Depositary to cause to be issued a Definitive Note in an amount equal to the beneficial interest to be transferred or exchanged; and

(ii) instructions given by the Depositary to the Registrar containing information regarding the Person in whose name such Definitive Note shall be

registered to effect the transfer or exchange referred to in (1) above; provided that in no event shall Definitive Notes be issued upon the transfer or exchange of beneficial interests in the Regulation S Temporary Global Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903 under the Securities Act. Upon consummation of an Exchange Offer by the Company in accordance with Section 2.06(f) hereof, the requirements of this Section 2.06(b)(2) shall be deemed to have been satisfied upon receipt by the Registrar of the instructions contained in the Letter of Transmittal delivered by the Holder of such beneficial interests in the Restricted Global Notes. Upon satisfaction of all of the requirements for transfer or exchange of beneficial interests in Global Notes contained in this Indenture and the Notes or otherwise applicable under the Securities Act, the Trustee shall adjust the principal amount of the relevant Global Note(s) pursuant to Section 2.06(h) hereof.

(3) Transfer of Beneficial Interests to Another Restricted Global Note. A beneficial interest in any Restricted Global Note may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in another Restricted Global Note if the transfer complies with the requirements of Section 2.06(b)(2) above and the Registrar receives the following:

(A) if the transferee will take delivery in the form of a beneficial interest in the 144A Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transferee will take delivery in the form of a beneficial interest in the Regulation S Temporary Global Note or the Regulation S Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transferee will take delivery in the form of a beneficial interest in the IAI Global Note, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(4) Transfer and Exchange of Beneficial Interests in a Restricted Global Note for Beneficial Interests in an Unrestricted Global Note. A beneficial interest in any Restricted Global Note may be exchanged by any Holder thereof for a beneficial interest in an Unrestricted Global Note or transferred to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note if the exchange or transfer complies with the requirements of Section 2.06(b)(2) above and:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of the beneficial interest to be transferred, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (i) a Broker-Dealer, (ii) a Person participating in the distribution of the Exchange Notes or (iii) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(a) thereof; or

(ii) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of a beneficial interest in an Unrestricted Global Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in

order to maintain compliance with the Securities Act.

If any such transfer is effected pursuant to subparagraph (B) or (D) above at a time when an Unrestricted Global Note has not yet been issued, the Company shall issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee shall authenticate one or more Unrestricted Global Notes in an aggregate principal amount equal to the aggregate principal amount of beneficial interests transferred pursuant to subparagraph (B) or (D) above.

Beneficial interests in an Unrestricted Global Note cannot be exchanged for, or transferred to Persons who take delivery thereof in the form of, a beneficial interest in a Restricted Global Note.

(c) Transfer or Exchange of Beneficial Interests for Definitive Notes.

(1) Beneficial Interests in Restricted Global Notes to Restricted Definitive Notes. If any holder of a beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Restricted Definitive Note, then, upon receipt by the Registrar of the following documentation:

(A) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for a Restricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (2)(a) thereof;

(B) if such beneficial interest is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such beneficial interest is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such beneficial interest is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such beneficial interest is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such beneficial interest is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such beneficial interest is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee shall cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Company shall execute and the Trustee shall authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c) shall be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest shall instruct the

Registrar through instructions from the Depositary and the Participant or Indirect Participant. The Trustee shall deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest in a Restricted Global Note pursuant to this Section 2.06(c)(1) shall bear the Private Placement Legend and shall be subject to all restrictions on transfer contained therein.

(2) Beneficial Interests in Regulation S Temporary Global Note to Definitive Notes. Notwithstanding Sections 2.06(c)(1)(A) and (C) hereof, a beneficial interest in the Regulation S Temporary Global Note may not be exchanged for a Definitive Note or transferred to a Person who takes delivery thereof in the form of a Definitive Note prior to (A) the expiration of the Restricted Period and (B) the receipt by the Registrar of any certificates required pursuant to Rule 903(b)(3)(ii)(B) under the Securities Act, except in the case of a transfer pursuant to an exemption from the registration requirements of the Securities Act other than Rule 903 or Rule 904.

(3) Beneficial Interests in Restricted Global Notes to Unrestricted Definitive Notes. A holder of a beneficial interest in a Restricted Global Note may exchange such beneficial interest for an Unrestricted Definitive Note or may transfer such beneficial interest to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the holder of such beneficial

interest, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (i) a Broker-Dealer, (ii) a Person participating in the distribution of the Exchange Notes or (iii) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(i) if the holder of such beneficial interest in a Restricted Global Note proposes to exchange such beneficial interest for an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit C hereto, including the certifications in item (1)(b) thereof; or

(ii) if the holder of such beneficial interest in a Restricted Global Note proposes to transfer such beneficial interest to a Person who shall take delivery thereof in the form of an Unrestricted Definitive Note, a certificate from such holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(4) Beneficial Interests in Unrestricted Global Notes to Unrestricted Definitive Notes. If any holder of a beneficial interest in an Unrestricted Global Note proposes to exchange such beneficial interest for a Definitive Note or to transfer such beneficial interest to a Person who takes delivery thereof in the form of a Definitive Note, then, upon

satisfaction of the conditions set forth in Section 2.06(b)(2) hereof, the Trustee will cause the aggregate principal amount of the applicable Global Note to be reduced accordingly pursuant to Section 2.06(h) hereof, and the Company will execute and the Trustee will authenticate and deliver to the Person designated in the instructions a Definitive Note in the appropriate principal amount. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(4) will be registered in such name or names and in such authorized denomination or denominations as the holder of such beneficial interest requests through instructions to the Registrar from or through the Depositary and the Participant or Indirect Participant. The Trustee will deliver such Definitive Notes to the Persons in whose names such Notes are so registered. Any Definitive Note issued in exchange for a beneficial interest pursuant to this Section 2.06(c)(4) will not bear the Private Placement Legend.

(d) Transfer and Exchange of Definitive Notes for Beneficial Interests.

(1) Restricted Definitive Notes to Beneficial Interests in Restricted Global Notes. If any Holder of a Restricted Definitive Note proposes to exchange such Note for a beneficial

interest in a Restricted Global Note or to transfer such Restricted Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in a Restricted Global Note, then, upon receipt by the Registrar of the following documentation:

(A) if the Holder of such Restricted Definitive Note proposes to exchange such Note for a beneficial interest in a Restricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (2)(b) thereof;

(B) if such Restricted Definitive Note is being transferred to a QIB in accordance with Rule 144A, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (1) thereof;

(C) if such Restricted Definitive Note is being transferred to a Non-U.S. Person in an offshore transaction in accordance with Rule 903 or Rule 904, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (2) thereof;

(D) if such Restricted Definitive Note is being transferred pursuant to an exemption from the registration requirements of the Securities Act in accordance with Rule 144, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(a) thereof;

(E) if such Restricted Definitive Note is being transferred to an Institutional Accredited Investor in reliance on an exemption from the registration requirements of the Securities Act other than those listed in subparagraphs (B) through (D) above, a certificate to the effect set forth in Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable;

(F) if such Restricted Definitive Note is being transferred to the Company or any of its Subsidiaries, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(b) thereof; or

(G) if such Restricted Definitive Note is being transferred pursuant to an effective registration statement under the Securities Act, a certificate to the effect set forth in Exhibit B hereto, including the certifications in item (3)(c) thereof,

the Trustee will cancel the Restricted Definitive Note, increase or cause to be increased the aggregate principal amount of, in the case of clause (A) above, the appropriate Restricted Global Note, in the case of clause (B) above, the 144A Global Note, in the case of clause (C) above, the Regulation S Global Note, and in all other

cases, the IAI Global Note.

(2) Restricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of a Restricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Restricted Definitive Note to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note only if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (i) a Broker-Dealer, (ii) a Person participating in the distribution

of the Exchange Notes or (iii) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(i) if the Holder of such Definitive Notes proposes to exchange such Notes for a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(c) thereof; or

(ii) if the Holder of such Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of a beneficial interest in the Unrestricted Global Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests or if the Applicable Procedures so require, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

Upon satisfaction of the conditions of any of the subparagraphs in this Section 2.06(d)(2), the Trustee will cancel the Definitive Notes and increase or cause to be increased the aggregate principal amount of the Unrestricted Global Note.

(3) Unrestricted Definitive Notes to Beneficial Interests in Unrestricted Global Notes. A Holder of an Unrestricted Definitive Note may exchange such Note for a beneficial interest in an Unrestricted Global Note or transfer such Definitive Notes to a Person who takes delivery thereof in the form of a beneficial interest in an Unrestricted Global Note at any time. Upon receipt of a request for such an exchange or transfer, the Trustee will cancel the applicable Unrestricted Definitive Note and increase or cause to be increased the aggregate principal amount of one of the Unrestricted Global Notes.

If any such exchange or transfer from a Definitive Note to a beneficial interest is effected pursuant to subparagraphs (2)(B), (2)(D) or (3) above at a time when an Unrestricted Global Note has not yet been issued, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will authenticate one or more Unrestricted Global Notes in an aggregate

principal amount equal to the principal amount of Definitive Notes so transferred.

(e) Transfer and Exchange of Definitive Notes for Definitive Notes. Upon request by a Holder of Definitive Notes and such Holder's compliance with the provisions of this Section 2.06(e), the Registrar will register the transfer or exchange of Definitive Notes. Prior to such registration of transfer or exchange, the requesting Holder must present or surrender to the Registrar the Definitive Notes duly

endorsed or accompanied by a written instruction of transfer in form satisfactory to the Registrar duly executed by such Holder or by its attorney, duly authorized in writing. In addition, the requesting Holder must provide any additional certifications, documents and information, as applicable, required pursuant to the following provisions of this Section 2.06(e).

(1) Restricted Definitive Notes to Restricted Definitive Notes. Any Restricted Definitive Note may be transferred to and registered in the name of Persons who take delivery thereof in the form of a Restricted Definitive Note if the Registrar receives the following:

(A) if the transfer will be made pursuant to Rule 144A, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (1) thereof;

(B) if the transfer will be made pursuant to Rule 903 or Rule 904, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications in item (2) thereof; and

(C) if the transfer will be made pursuant to any other exemption from the registration requirements of the Securities Act, then the transferor must deliver a certificate in the form of Exhibit B hereto, including the certifications, certificates and Opinion of Counsel required by item (3) thereof, if applicable.

(2) Restricted Definitive Notes to Unrestricted Definitive Notes. Any Restricted Definitive Note may be exchanged by the Holder thereof for an Unrestricted Definitive Note or transferred to a Person or Persons who take delivery thereof in the form of an Unrestricted Definitive Note if:

(A) such exchange or transfer is effected pursuant to the Exchange Offer in accordance with the Registration Rights Agreement and the Holder, in the case of an exchange, or the transferee, in the case of a transfer, certifies in the applicable Letter of Transmittal that it is not (i) a broker-dealer, (ii) a Person participating in the distribution of the Exchange Notes or (iii) a Person who is an affiliate (as defined in Rule 144) of the Company;

(B) any such transfer is effected pursuant to the Shelf Registration Statement in accordance with the Registration Rights Agreement;

(C) any such transfer is effected by a Broker-Dealer pursuant to the Exchange Offer Registration Statement in accordance with the Registration Rights Agreement; or

(D) the Registrar receives the following:

(i) if the Holder of such Restricted Definitive Notes proposes to exchange such Notes for an Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit C hereto, including the certifications in item (1)(d) thereof; or

(ii) if the Holder of such Restricted Definitive Notes proposes to transfer such Notes to a Person who shall take delivery thereof in the form of an

Unrestricted Definitive Note, a certificate from such Holder in the form of Exhibit B hereto, including the certifications in item (4) thereof;

and, in each such case set forth in this subparagraph (D), if the Registrar so requests, an Opinion of Counsel in form reasonably acceptable to the Registrar to the effect that such exchange or transfer is in compliance with the Securities Act and that the restrictions on transfer contained herein and in the Private Placement Legend are no longer required in order to maintain compliance with the Securities Act.

(3) Unrestricted Definitive Notes to Unrestricted Definitive Notes. A Holder of Unrestricted Definitive Notes may transfer such Notes to a Person who takes delivery thereof in the form of an Unrestricted Definitive Note. Upon receipt of a request to register such a transfer, the Registrar shall register the Unrestricted Definitive Notes pursuant to the instructions from the Holder thereof.

(f) Exchange Offer. Upon the occurrence of the Exchange Offer in accordance with the Registration Rights Agreement, the Company will issue and, upon receipt of an Authentication Order in accordance with Section 2.02 hereof, the Trustee will authenticate:

(1) one or more Unrestricted Global Notes in an aggregate principal amount equal to the principal amount of the beneficial interests in the Restricted Global Notes accepted for exchange in the Exchange Offer

by Persons that certify in the applicable Letters of Transmittal that (A) they are not Broker-Dealers, (B) they are not participating in a distribution of the Exchange Notes and (z) they are not affiliates (as defined in Rule 144) of the Company; and

(2) Unrestricted Definitive Notes in an aggregate principal amount equal to the principal amount of the Restricted Definitive Notes accepted for exchange in the Exchange Offer.

Concurrently with the issuance of such Notes, the Trustee will cause the aggregate principal amount of the applicable Restricted Global Notes to be reduced accordingly, and the Company will execute and the Trustee will authenticate and deliver to the Persons designated by the Holders of Definitive Notes so accepted Unrestricted Definitive Notes in the appropriate principal amount.

(g) Legends. The following legends will appear on the face of all Global Notes and Definitive Notes issued under this Indenture unless specifically stated otherwise in the applicable provisions of this Indenture.

(1) Private Placement Legend.

(A) Except as permitted by subparagraph (B) below, each Global Note and each Definitive Note (and all Notes issued in exchange therefor or substitution thereof) shall bear the legend in substantially the following form:

"THE SECURITY (OR ITS PREDECESSOR) EVIDENCED HEREBY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER SECTION 5 OF THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THE SECURITY EVIDENCED HEREBY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THE SECURITY EVIDENCED HEREBY IS

HEREBY NOTIFIED THAT THE SELLER MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT. THE HOLDER OF THE SECURITY EVIDENCED HEREBY AGREES FOR THE BENEFIT OF American Casino & Entertainment Properties LLC THAT (A) SUCH SECURITY MAY BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (1) (a) IN THE UNITED STATES TO A PERSON WHO THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (b) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE

WITH RULE 904 UNDER THE SECURITIES ACT, (c) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144 UNDER THE SECURITIES ACT, (d) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" (AS DEFINED IN RULE 501 (a) (1), (2), (3) OR (7) OF THE SECURITIES ACT) THAT, PRIOR TO SUCH TRANSFER, FURNISHES THE TRUSTEE A SIGNED LETTER CONTAINING CERTAIN REPRESENTATIONS AND AGREEMENTS (THE FORM OF WHICH CAN BE OBTAINED FROM THE TRUSTEE) AND, IF SUCH TRANSFER IS IN RESPECT OF AN AGGREGATE PRINCIPAL AMOUNT OF NOTES LESS THAN $250,000, AN OPINION OF COUNSEL ACCEPTABLE TO AMERICAN CASINO & ENTERTAINMENT PROPERTIES LLC THAT SUCH TRANSFER IS IN COMPLIANCE WITH THE SECURITIES ACT OR (e) IN ACCORDANCE WITH ANOTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT (AND BASED UPON AN OPINION OF COUNSEL IF American Casino & Entertainment Properties LLC SO REQUESTS), (2) TO American Casino & Entertainment Properties LLC OR (3) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT AND, IN EACH CASE, IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER FROM IT OF THE SECURITY EVIDENCED HEREBY OF THE RESALE RESTRICTIONS SET FORTH IN (A) ABOVE. IF AT ANY TIME THE NEVADA GAMING COMMISSION FINDS THAT A HOLDER OF THIS SECURITY IS UNSUITABLE TO CONTINUE TO OWN THE SECURITY, AMERICAN CASINO & ENTERTAINMENT PROPERTIES LLC SHALL HAVE THE RIGHT TO REQUIRE SUCH HOLDER TO DISPOSE OF SUCH SECURITY AS PROVIDED BY THE GAMING LAWS OF THE STATE OF NEVADA AND THE REGULATIONS PROMULGATED THEREUNDER. ALTERNATIVELY, AMERICAN CASINO & ENTERTAINMENT PROPERTIES LLC SHALL HAVE THE RIGHT TO REDEEM THE SECURITY FROM THE HOLDER AT A PRICE SPECIFIED IN THE INDENTURE GOVERNING THE SECURITY. NEVADA GAMING LAWS AND REGULATIONS RESTRICT THE RIGHT UNDER CERTAIN CIRCUMSTANCES: (A) TO PAY OR RECEIVE ANY INTEREST UPON SUCH SECURITY; (B) TO EXERCISE, DIRECTLY OR THROUGH ANY TRUSTEE OR NOMINEE, ANY VOTING RIGHT CONFERRED BY SUCH SECURITY; OR (C) TO RECEIVE ANY REMUNERATION IN ANY FORM FROM AMERICAN CASINO & ENTERTAINMENT PROPERTIES LLC, FOR SERVICES RENDERED OR OTHERWISE."

(B) Notwithstanding the foregoing, any Global Note or Definitive Note issued pursuant to subparagraphs (b)(4), (c)(3), (c)(4), (d)(2), (d)(3), (e)(2), (e)(3) or (f) of this Section 2.06 (and all Notes issued in exchange therefor or substitution thereof) will not bear the Private Placement Legend.

(2) Global Note Legend. Each Global Note will bear a legend in substantially the following form:

"THIS GLOBAL NOTE IS HELD BY THE DEPOSITARY (AS DEFINED IN THE INDENTURE GOVERNING THIS NOTE) OR ITS NOMINEE IN CUSTODY FOR THE BENEFICIAL OWNERS HEREOF, AND IS NOT TRANSFERABLE TO ANY PERSON UNDER

ANY CIRCUMSTANCES EXCEPT THAT (1) THE TRUSTEE MAY MAKE SUCH NOTATIONS HEREON AS MAY BE REQUIRED PURSUANT TO SECTION 2.06 OF THE INDENTURE, (2) THIS GLOBAL NOTE MAY BE EXCHANGED IN WHOLE BUT NOT IN PART PURSUANT TO SECTION 2.06(a) OF THE INDENTURE, (3) THIS GLOBAL NOTE MAY BE DELIVERED TO THE TRUSTEE FOR CANCELLATION PURSUANT TO SECTION 2.11 OF THE INDENTURE AND (4) THIS GLOBAL NOTE MAY BE TRANSFERRED TO A SUCCESSOR DEPOSITARY WITH THE PRIOR WRITTEN CONSENT OF AMERICAN CASINO & ENTERTAINMENT PROPERTIES LLC.

UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR NOTES IN DEFINITIVE FORM, THIS NOTE MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY. UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR SUCH OTHER ENTITY AS MAY BE REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

(3) Regulation S Temporary Global Note Legend.

"THE RIGHTS ATTACHING TO THIS REGULATION S TEMPORARY GLOBAL NOTE, AND THE CONDITIONS AND PROCEDURES GOVERNING ITS EXCHANGE FOR CERTIFICATES NOTES, ARE AS SPECIFIED IN THE INDENTURE (AS DEFINED HEREIN). NEITHER THE HOLDER NOR THE

BENEFICIAL OWNERS OF THIS REGULATION S TEMPORARY GLOBAL NOTE SHALL BE ENTITLED TO RECEIVE PAYMENT OF INTEREST HEREON."

(h) Cancellation and/or Adjustment of Global Notes. At such time as all beneficial interests in a particular Global Note have been exchanged for Definitive Notes or a particular Global Note has been redeemed, repurchased or canceled in whole and not in part, each such Global Note will be returned to or retained and canceled by the Trustee in accordance with Section 2.11 hereof. At any time prior to such cancellation, if any beneficial interest in a Global Note is exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note or for Definitive Notes, the principal amount of Notes represented by such Global Note will be reduced accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such reduction; and if the beneficial interest is being exchanged for or transferred to a Person who will take delivery thereof in the form of a beneficial interest in another Global Note, such other Global Note will be increased accordingly and an endorsement will be made on such Global Note by the Trustee or by the Depositary at the direction of the Trustee to reflect such increase.

(i) General Provisions Relating to Transfers and Exchanges.

(1) To permit registrations of transfers and exchanges, the Company will execute and the Trustee will authenticate Global Notes and Definitive Notes upon receipt of an Authentication Order in accordance with Section 2.02 or at the Registrar's request.

(2) No service charge will be made to a Holder of a beneficial interest in a Global Note or to a Holder of a Definitive Note for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer taxes or similar governmental charge payable upon exchange or transfer pursuant to Sections 2.10, 3.06, 3.11, 4.10, 4.15 and 9.05 hereof).

(3) The Registrar will not be required to register the transfer of or exchange of any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part.

(4) All Global Notes and Definitive Notes issued upon any registration of transfer or exchange of Global Notes or Definitive Notes will be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Global Notes or Definitive Notes surrendered upon such registration of transfer or exchange.

(5) Neither the Registrar nor the Company will be required:

(A) to issue, to register the transfer of or to exchange any Notes during a period beginning at the opening of business 15 days before the day of any selection of Notes for redemption under Section 3.02 hereof and ending at the close of business on the day of selection;

(B) to register the transfer of or to exchange any Note selected for redemption in whole or in part, except the unredeemed portion of any Note being redeemed in part; or

(C) to register the transfer of or to exchange a Note between a record date and the next succeeding interest payment date.

(6) Prior to due presentment for the registration of a transfer of any Note, the Trustee, any Agent and the Company may deem and treat the Person in whose name any Note is registered as the absolute owner of such Note for the purpose of receiving payment of principal of and interest on such Notes and for all other purposes, and none of the Trustee, any Agent or the Company shall be affected by notice to the contrary.

(7) The Trustee will authenticate Global Notes and Definitive Notes in accordance with the provisions of Section 2.02 hereof.

(8) All certifications, certificates and Opinions of Counsel required to be submitted to the Registrar pursuant to this Section 2.06 to effect a registration of transfer or exchange may be submitted by facsimile.

Section 2.07 Replacement Notes.

If any mutilated Note is surrendered to the Trustee or the Company and the Trustee receives evidence to its satisfaction of the destruction, loss or theft of any Note, the Company will issue and the Trustee, upon receipt of an Authentication Order, will authenticate a replacement Note if the Trustee's requirements are met. If required by the Trustee or the Company, an indemnity bond must be supplied by the Holder that is sufficient in the judgment of the Trustee and the Company to protect the Company, the

Trustee, any Agent and any authenticating agent from any loss that any of them may suffer if a Note is replaced. The Company may charge for its expenses in replacing a Note.

Every replacement Note is an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and proportionately with all other Notes duly issued hereunder.

Section 2.08 Outstanding Notes.

The Notes outstanding at any time are all the Notes authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest in a Global Note effected by the Trustee in accordance with the provisions hereof, and those described in this Section as not outstanding. Except as set forth in Section 2.09 hereof, a Note does not cease to be outstanding because the Company or an Affiliate of the Company holds the Note; however, Notes held by the Company or a Subsidiary of the Company shall not be deemed to be outstanding for purposes of Section 3.07(a) or 9.02 hereof.

If a Note is replaced pursuant to Section 2.07 hereof, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Note is held by a protected purchaser.

If the principal amount of any Note is considered paid under Section 4.01 hereof, it ceases to be outstanding and interest on it ceases to accrue.

If the Paying Agent (other than the Company, a Subsidiary or an Affiliate of any thereof) holds, on a redemption date or maturity date, money sufficient to pay Notes payable on that date, then on and after that date such Notes will be deemed to be no longer outstanding and will cease to accrue interest.

Section 2.09 Treasury Notes.

In determining whether the Holders of the required principal amount of Notes have concurred in any direction, waiver or consent, Notes owned by the Company or any Guarantor, or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Guarantor, will be considered as though not outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Notes that the Trustee knows are so owned will be so disregarded.

Section 2.10 Temporary Notes.

Until certificates representing Notes are ready for delivery, the Company may prepare and the Trustee, upon receipt of an Authentication Order, will authenticate temporary Notes. Temporary Notes will be substantially in the form of certificated Notes but may have variations that the Company considers appropriate for temporary Notes and as may be reasonably acceptable to the Trustee. Without unreasonable delay, the Company will prepare and the Trustee will authenticate definitive Notes in exchange for temporary Notes.

Holders of temporary Notes will be entitled to all of the benefits of this Indenture.

Section 2.11 Cancellation.

The Company at any time may deliver Notes to the Trustee for cancellation. The Registrar and Paying Agent will forward to the Trustee any Notes surrendered to them for registration of transfer, exchange or payment. The Trustee and no one else will cancel all Notes surrendered for registration of

transfer, exchange, payment, replacement or cancellation and will destroy canceled Notes (subject to the record retention requirement of the Exchange Act). Certification of the destruction of all canceled Notes will be delivered to the Company. The Company may not issue new Notes to replace Notes that it has paid or that have been delivered to the Trustee for cancellation.

Section 2.12 Defaulted Interest.

If the Company defaults in a payment of interest on the Notes, it will pay the defaulted interest in any lawful manner plus, to the extent lawful, interest payable on the defaulted interest, to the Persons who are Holders on a subsequent special record date, in each case at the rate provided in the Notes and in Section 4.01 hereof. The Company will notify the Trustee in writing of the amount of defaulted interest proposed to be paid on each Note and the date of the proposed payment. The Company will fix or cause to be fixed each such special record date and payment date, provided that no such special record date may be less than 10 days prior to the related payment date for such defaulted interest. At least 15 days before the special record date, the Company (or, upon the written request of the Company, the Trustee in the name and at the expense of the Company) will mail or cause to be mailed to Holders a notice that states the special record date, the related payment date and the amount of such interest to be paid.

ARTICLE 3.
REDEMPTION AND PREPAYMENT

Section 3.01 Notices to Trustee.

If the Company elects to redeem Notes pursuant to the optional redemption provisions of Section 3.07 hereof, it must furnish to the Trustee, at least 15 days but not more than 60 days before a redemption date, an Officers' Certificate setting forth:

(1) the clause of this Indenture pursuant to which the redemption shall occur;

(2) the redemption date;

(3) the principal amount of Notes to be redeemed; and

(4) the redemption price.

Section 3.02 Selection of Notes to Be Redeemed or Purchased.

If less than all of the Notes are to be redeemed or purchased in an offer to purchase at any time, the Trustee will select Notes for redemption or purchase as follows:

(1) if the Notes are listed on any national securities exchange, in compliance with the requirements of the principal national securities exchange on which the Notes are listed; or

(2) if the Notes are not listed on any national securities exchange, on a pro rata basis, by lot or by such method as the Trustee shall deem fair and appropriate.

In the event of partial redemption or purchase by lot, the particular Notes to be redeemed or purchased will be selected, unless otherwise provided herein, not less than 15 nor more than 60 days prior to the redemption or purchase date by the Trustee from the outstanding Notes not previously called for redemption or purchase.

The Trustee will promptly notify the Company in writing of the Notes selected for redemption or purchase and, in the case of any Note selected for partial redemption or purchase, the principal amount thereof to be redeemed or purchased. Notes and portions of Notes selected will be in amounts of $1,000 or whole multiples of $1,000; except that if all of the Notes of a Holder are to be redeemed or purchased, the entire outstanding amount of Notes held by such Holder, even if not a multiple of $1,000, shall be redeemed or purchased. Except as provided in the preceding sentence, provisions of this Indenture that apply to Notes called for redemption or purchase also apply to portions of Notes called for redemption or purchase.

Section 3.03 Notice of Redemption.

Subject to the provisions of Section 3.11 hereof, at least 15 days but not more than 60 days before a redemption date, the Company will mail or cause to be mailed, by first class mail, a notice of redemption to each Holder whose Notes are to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the Notes or a satisfaction and discharge of this Indenture pursuant to Articles 8 or 12 of this Indenture.

The notice will identify the Notes to be redeemed and will state:

(1) the redemption date;

(2) the redemption price;

(3) if any Note is being redeemed in part, the portion of the principal amount of such Note to be redeemed and that, after the redemption date upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion will be issued upon cancellation of the original Note;

(4) the name and address of the Paying Agent;

(5) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(6) that, unless the Company defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date;

(7) the paragraph of the Notes and/or Section of this Indenture pursuant to which the Notes called for redemption are being redeemed; and

(8) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Notes.

At the Company's request, the Trustee will give the notice of redemption in the Company's name and at its expense; provided, however, that the Company has delivered to the Trustee, at least 45 days prior to the redemption date, an Officers' Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption.

Once notice of redemption is mailed in accordance with Section 3.03 hereof, Notes called for redemption become irrevocably due and payable on the redemption date at the redemption price. A notice of redemption may not be conditional.

Section 3.05 Deposit of Redemption or Purchase Price.

One Business Day prior to the redemption or purchase date, the Company will deposit with the Trustee or with the Paying Agent money sufficient to pay the redemption or purchase price of and accrued interest and Liquidated Damages, if any, on all Notes to be redeemed or purchased on that date. The Trustee or the Paying Agent will promptly return to the Company any money deposited with

the Trustee or the Paying Agent by the Company in excess of the amounts necessary to pay the redemption or purchase price of, and accrued interest and Liquidated Damages, if any, on, all Notes to be redeemed or purchased.

If the Company complies with the provisions of the preceding paragraph, on and after the redemption or purchase date, interest will cease to accrue on the Notes or the portions of Notes called for redemption or purchase. If a Note is redeemed or purchased on or after an interest record date but on or prior to the related interest payment date, then any accrued and unpaid interest shall be paid to the Person in whose name such Note was registered at the close of business on such record date. If any Note called for redemption or purchase is not so paid upon surrender for redemption or purchase because of the failure of the Company to comply with the preceding paragraph, interest shall be paid on the unpaid principal, from the redemption or purchase date until such principal is paid, and to the extent lawful on any interest not paid on such unpaid principal, in each case at the rate provided in the Notes and in Section 4.01 hereof.

Section 3.06 Notes Redeemed or Purchased in Part.

Upon surrender of a Note that is redeemed or purchased in part, the Company will issue and, upon receipt of an Authentication Order, the Trustee will authenticate for the Holder at the expense of the Company a new Note equal in principal amount to the unredeemed or unpurchased portion of the Note surrendered.

Section 3.07 Optional Redemption.

(a) At any time prior to February 1, 2007, the Company may on any one or more occasions redeem up to 35% of the aggregate principal amount of Notes (including Additional Notes) issued under this Indenture at a redemption price of 107.850% of the principal amount thereof, plus accrued and unpaid interest and Liquidated Damages, if any, to the redemption date, with the net cash proceeds of one or more Equity Offerings or from the proceeds of Permitted Affiliate Subordinated Debt of ACEP; provided that:

(1) at least 65% of the aggregate principal amount of Notes originally issued under this Indenture (excluding Notes held by the Company and its Subsidiaries) remains outstanding immediately after the occurrence of such redemption; and

(2) the redemption must occur within 60 days of the date of the closing of such Equity Offering or the issuance of Permitted Affiliate Subordinated Debt.

(b) On or after February 1, 2008, the Company may redeem all or a part of the Notes upon not less than 15 nor more than 60 days notice, at the redemption prices (expressed as percentages of principal amount) set forth below plus accrued and unpaid interest and Liquidated Damages, if any, thereon, to the applicable redemption date, if redeemed during the twelve-month period beginning on February 1 of the years indicated below, subject to the rights of Noteholders on the relevant record date to receive interest on the relevant interest payment date:

Year	Percentage
2008	103.925%
2009	101.963%
2010 and thereafter	100.000%

(c) Any redemption pursuant to this Section 3.07 shall be made pursuant to the provisions of Section 3.01 through 3.06 hereof.

Section 3.08 Redemption Pursuant to Gaming Laws.

(a) Notwithstanding any other provision of this Article 3, if any Gaming Authority requires that a holder or Beneficial Owner of Notes be licensed,

qualified or found suitable under any applicable Gaming Law and such holder or Beneficial Owner:

(1) fails to apply for a license, qualification or a finding of suitability within 30 days (or such shorter period as may be required by the applicable Gaming Authority) after being requested to do so by the Gaming Authority; or

(2) is denied such license or qualification or not found suitable;

ACEP shall then have the right, at its option:

(1) to require each such holder or Beneficial Owner to dispose of its Notes within 30 days (or such earlier date as may be required by the applicable Gaming Authority) of the occurrence of the event described in clause (1) or (2) above, or

(2) to redeem the Notes of each such holder or Beneficial Owner, in accordance with Rule 14e-1 of the Exchange Act, if applicable, at a redemption price equal to the lowest of:

(a) the principal amount thereof, together with accrued and unpaid interest and Liquidated Damages, if any, to the earlier of the date of redemption, the date 30 days' after such holder or Beneficial Owner is required to apply for a license, qualification or finding of suitability (or such shorter period that may be required by any applicable Gaming Authority) if such holder or Beneficial Owner fails to do so ("Application Date") or of the date of denial of license or qualification or of the finding of unsuitability by such Gaming Authority;

(b) the price at which such holder or Beneficial Owner acquired the Notes, together with accrued and unpaid interest and Liquidated Damages, if any, to the earlier of the date of redemption, the Application Date or the date of the denial of license or qualification or of the finding of unsuitability by such Gaming Authority; and

(c) such other lesser amount as may be required by any Gaming Authority.

Immediately upon a determination by a Gaming Authority that a holder or Beneficial Owner of the Notes will not be licensed, qualified or found suitable and must dispose of the Notes, the holder or Beneficial Owner will, to the extent required by applicable Gaming Laws, have no further right:

(1) to exercise, directly or indirectly, through any trustee or nominee or any other person or entity, any right conferred by the Notes, the Note Guarantees or this Indenture; or

(2) to receive any interest, Liquidated Damages, dividend, economic interests or any other distributions or payments with respect to the Notes and the Note Guarantees or any remuneration in any form with respect to the Notes and the Note Guarantees from the Company, the Guarantors or the Trustee, except the redemption price referred to above.

(b) ACEP shall notify the Trustee in writing of any such redemption as soon as practicable. Any Holder or Beneficial Owner that is required to apply for a license, qualification or a finding of suitability will be responsible for all fees and costs of applying for and obtaining the license, qualification or finding of suitability and of any investigation by the applicable Gaming Authorities and the Company shall not reimburse any Holder or Beneficial Owner for such expense.

(c) In connection with any redemption pursuant to this Section 3.08, and except as may be required by a Gaming Authority, the Company shall be required to comply with Sections 3.01 through 3.06 hereof.

Section 3.09 Special Mandatory Redemption.

(a) The net proceeds of the Notes together with an amount sufficient to redeem the Notes on the date that is thirty-two (32) days after the date hereof at a redemption price equal to 100% of the principal amount of the Notes, plus

accrued and unpaid interest to the date of redemption (the "Special Redemption Price") will be placed in the Note Proceeds Account pursuant to the terms and conditions of the Escrow Agreement.

(b) In the event each of the Release Conditions shall not have been satisfied on or prior to the earlier of (A) August 31, 2004 and (B) an Interest Top-Off Failure (the earlier of (A) and (B) being the "Escrow Break Date"), ACEP shall redeem (a "Special Mandatory Redemption") all of the Notes, on the second Business Day immediately following the Escrow Break Date at the Special Redemption Price.

(c) On or before the Escrow Break Date, if the Escrow Agent receives a certificate from the Company certifying that the Company has made a good faith determination that it will be unable to meet the Release Conditions by the Escrow Break Date, a Special Mandatory Redemption at the Special Redemption Price shall occur on the second Business Day immediately following the date such notice is delivered.

(d) Other than as specifically provided in this Section 3.09 or in the Escrow Agreement, any Special Mandatory Redemption shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.10 Mandatory Redemption.

Other than as set forth in Sections 3.08 and 3.09, the Company is not required to make mandatory redemption or sinking fund payments with respect to the Notes.

Section 3.11 Offer to Purchase by Application of Excess Proceeds.

In the event that, pursuant to Section 4.10 hereof, the Company is required to commence an offer to all Holders to purchase Notes (an "Asset Sale Offer"), it will follow the procedures specified below.

The Asset Sale Offer shall be made to all Holders and all holders of other Indebtedness that is pari passu with the Notes containing provisions similar to those set forth in this Indenture with respect to offers to purchase or redeem with the proceeds of sales of assets. The Asset Sale Offer will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "Offer Period"). No later than three Business Days after the termination of the Offer Period (the "Purchase Date"), the Company will apply all Excess Proceeds (the "Offer Amount") to the purchase of Notes and such other pari passu Indebtedness (on a pro rata basis, if applicable) or, if less than the Offer Amount has been tendered, all Notes and other Indebtedness tendered in response to the Asset Sale Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made.

If the Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest and Liquidated Damages, if any, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Asset Sale Offer.

Upon the commencement of an Asset Sale Offer, the Company will send, by first class mail, a notice to the Trustee and each of the Holders, with a copy to the Trustee. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Asset Sale Offer. The notice, which will govern the terms of the Asset Sale Offer, will state:

(1) that the Asset Sale Offer is being made pursuant to this Section 3.11 and Section 4.10 hereof and the length of time the Asset Sale Offer will remain open;

(2) the Offer Amount, the purchase price and the Purchase Date;

(3) that any Note not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Company defaults in making such payment, any

Note accepted for payment pursuant to the Asset Sale Offer will cease to accrue interest after the Purchase Date;

(5) that Holders electing to have a Note purchased pursuant to an Asset Sale Offer may elect to have Notes purchased in integral multiples of $1,000 only;

(6) that Holders electing to have Notes purchased pursuant to any Asset Sale Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Company, a Depositary, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Purchase Date;

(7) that Holders will be entitled to withdraw their election if the Company, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Offer Period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(8) that, if the aggregate principal amount of Notes and other pari passu Indebtedness surrendered by holders thereof exceeds the Offer Amount, the Trustee will select the Notes and other pari passu Indebtedness to be purchased on a pro rata basis based on the principal amount of Notes and such other pari passu Indebtedness surrendered (with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of $1,000, or integral multiples thereof, will be purchased); and

(9) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Purchase Date, the Company will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Offer Amount of Notes or portions thereof tendered pursuant to the Asset Sale Offer, or if less than the Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.11. The Company, the Depositary or the Paying Agent, as the case may be, will promptly (but in any case not later than five days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company, will promptly issue a new Note, and the Trustee, upon written request from the Company will authenticate and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company will publicly announce the results of the Asset Sale Offer on the Purchase Date.

Other than as specifically provided in this Section 3.11, any purchase pursuant to this Section 3.11 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

Section 3.12 Offer to Purchase by Application of Excess Loss Proceeds.

In the event that, pursuant to Section 4.16 hereof, the Company is required to commence an Event of Loss Offer to all Holders to purchase Notes, it will follow the procedures specified below.

The Event of Loss Offer (as defined in Section 4.16) shall be made to all Holders and all holders of other Indebtedness that is pari passu with the Notes containing provisions similar to those set forth in this Indenture that require the Company to make an Event of Loss Offer. The Event of Loss Offer will remain open for a period of at least 20 Business Days following its commencement and not more than 30 Business Days, except to the extent that a longer period is required by applicable law (the "Event of Loss Offer Period"). No later than

three Business Days after the termination of the Event of Loss Offer Period (the "Event of Loss Purchase Date"), the Company will apply all Excess Loss Proceeds (the "Event of Loss Offer Amount") to the purchase of Notes and such other pari passu Indebtedness (on a pro rata basis, if applicable) or, if less than the Event of Loss Offer Amount has been tendered, all Notes and other Indebtedness tendered in response to the Event of Loss Offer. Payment for any Notes so purchased will be made in the same manner as interest payments are made.

If the Event of Loss Purchase Date is on or after an interest record date and on or before the related interest payment date, any accrued and unpaid interest and Liquidated Damages, if any, will be paid to the Person in whose name a Note is registered at the close of business on such record date, and no additional interest will be payable to Holders who tender Notes pursuant to the Event of Loss Offer.

Upon the commencement of an Event of Loss Offer, the Company will send, by first class mail, a notice to the Trustee and each of the Holders, with a copy to the Trustee. The notice will contain all instructions and materials necessary to enable such Holders to tender Notes pursuant to the Event of Loss Offer. The notice, which will govern the terms of the Event of Loss Offer, will state:

(1) that the Event of Loss Offer is being made pursuant to this Section 3.12 and Section 4.16 hereof and the length of time the Event of Loss Offer will remain open;

(2) the Event of Loss Offer Amount, the purchase price and the Event of Loss Purchase Date;

(3) that any Note not tendered or accepted for payment will continue to accrue interest;

(4) that, unless the Company defaults in making such payment, any Note accepted for payment pursuant to the Event of Loss Offer will cease to accrue interest after the Event of Loss Purchase Date;

(5) that Holders electing to have a Note purchased pursuant to an Event of Loss Offer may elect to have Notes purchased in integral multiples of $1,000 only;

(6) that Holders electing to have Notes purchased pursuant to any Event of Loss Offer will be required to surrender the Note, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Company, a Depositary, if appointed by the Company, or a Paying Agent at the address specified in the notice at least three days before the Event of Loss Purchase Date;

(7) that Holders will be entitled to withdraw their election if the Company, the Depositary or the Paying Agent, as the case may be, receives, not later than the expiration of the Event of Loss Offer Period, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of the Note the Holder delivered for purchase and a statement that such Holder is withdrawing his election to have such Note purchased;

(8) that, if the aggregate principal amount of Notes and other pari passu Indebtedness surrendered by holders thereof exceeds the Event of Loss Offer Amount, the Trustee will select the Notes and other pari passu Indebtedness to be purchased on a pro rata basis based on the principal amount of Notes and such other pari passu Indebtedness surrendered (with such adjustments as may be deemed appropriate by the Company so that only Notes in denominations of $1,000, or integral multiples thereof, will be purchased); and

(9) that Holders whose Notes were purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered (or transferred by book-entry transfer).

On or before the Event of Loss Purchase Date, the Company will, to the extent lawful, accept for payment, on a pro rata basis to the extent necessary, the Event of Loss Offer Amount of Notes or portions thereof tendered pursuant to

the Event of Loss Offer, or if less than the Event of Loss Offer Amount has been tendered, all Notes tendered, and will deliver or cause to be delivered to the Trustee the Notes properly accepted together with an Officers' Certificate stating that such Notes or portions thereof were accepted for payment by the Company in accordance with the terms of this Section 3.12. The Company, the Depositary or the Paying Agent, as the case may be, will promptly (but in any case not later than five

days after the Purchase Date) mail or deliver to each tendering Holder an amount equal to the purchase price of the Notes tendered by such Holder and accepted by the Company for purchase, and the Company, will promptly issue a new Note, and the Trustee, upon written request from the Company will authenticate and mail or deliver (or cause to be transferred by book entry) such new Note to such Holder, in a principal amount equal to any unpurchased portion of the Note surrendered. Any Note not so accepted shall be promptly mailed or delivered by the Company to the Holder thereof. The Company will publicly announce the results of the Event of Loss Offer on the Event of Loss Purchase Date.

Other than as specifically provided in this Section 3.12, any purchase pursuant to this Section 3.12 shall be made pursuant to the provisions of Sections 3.01 through 3.06 hereof.

ARTICLE 4.
COVENANTS

Section 4.01 Payment of Notes.

The Company will pay or cause to be paid the principal of, premium, if any, and interest and Liquidated Damages, if any, on the Notes on the dates and in the manner provided in the Notes. Principal, premium, if any, and interest and Liquidated Damages, if any will be considered paid on the date due if the Paying Agent, if other than the Company or a Subsidiary thereof, holds as of 10:00 a.m. Eastern Time on the due date money deposited by the Company in immediately available funds and designated for and sufficient to pay all principal, premium, if any, and interest then due. The Company will pay all Liquidated Damages, if any, in the same manner on the dates and in the amounts set forth in the Registration Rights Agreement.

The Company will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue principal at the rate equal to 1% per annum in excess of the then applicable interest rate on the Notes to the extent lawful; it will pay interest (including post-petition interest in any proceeding under any Bankruptcy Law) on overdue installments of interest and Liquidated Damages (without regard to any applicable grace period) at the same rate to the extent lawful.

Section 4.02 Maintenance of Office or Agency.

The Company will maintain in the Borough of Manhattan, the City of New York, an office or agency (which may be an office of the Trustee or an affiliate of the Trustee, Registrar or co-registrar) where Notes may be surrendered for registration of transfer or for exchange and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company fails to maintain any such required office or agency or fails to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee.

The Company may also from time to time designate one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission will in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, the City of New York for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby designates the Corporate Trust Office of the Trustee as one such office or agency of the Company in accordance with Section 2.03 hereof.

Section 4.03 Reports.

(a) Prior to the Acquisition Date, ACEP will furnish to all holders of the Notes and prospective purchasers of the Notes designated by the holders, promptly upon their request, the information required to be delivered under Rule 144A(d)(4) of the Securities Act. In addition, until consummation of the Acquisitions, ACEP will file with the Trustee, by the day that it would have been required to file the same with the SEC if ACEP had been subject to the periodic reporting requirements of the Exchange Act and excluding any time periods applicable to "accelerated filers" under the Exchange Act, quarterly and annual financial statements, including any notes thereto (and with respect to annual financial statements only, an auditors' report by a firm of established national reputation), and a "Management's Discussion and Analysis of Results of Operations and Financial Condition," both comparable to that which ACEP would have been required to include in a quarterly report on Form 10-Q or an annual report on Form 10-K if ACEP had been subject to those periodic reporting requirements and prepared as combined financial statements presenting the financial position, results of operations and cash flows of American Casino & Entertainment Properties which is comprised of Stratosphere Corporation and its wholly-owned subsidiaries, Stratosphere Gaming Corp., Stratosphere Land Corporation, Stratosphere Advertising Agency, Stratosphere Leasing, LLC, 2000 South Las Vegas Boulevard Retail Corporation and Stratosphere Development, LLC, Arizona Charlie's, Inc., and its wholly-owned subsidiary Jetset LLC; and Fresca, LLC, for applicable periods ended December 31, 2000 and thereafter.

(b) Following the Acquisitions, whether or not required by the rules and regulations of the SEC, so long as any Notes are outstanding, the Company will furnish to the Holders of Notes or cause the Trustee to furnish to the Holders of Notes, within the time periods specified in the SEC's rules and regulations:

(1) all quarterly and annual financial information that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Company were required to file such forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report thereon by the Company's certified independent accountants; and

(2) all current reports that would be required to be filed with the SEC on Form 8-K if the Company were required to file such reports.

In addition, following the consummation of the Exchange Offer contemplated by the Registration Rights Agreement, whether or not required by the SEC, the Company will file a copy of all of the information and reports referred to in clauses (1) and (2) above with the SEC for public availability within the time periods specified in the SEC's rules and regulations (unless the SEC will not accept such a filing) and, if the SEC will not accept such a filing, will post the reports on its website within those time periods. The Company will not take any action for the purpose of causing the SEC not to accept any such filings. The Company will at all times comply with TIA Section 314(a).

(c) If the Company has designated any of its Subsidiaries as Unrestricted Subsidiaries, then the quarterly and annual financial information required by the preceding paragraph will include a reasonably detailed presentation, either on the face of the financial statements or in the footnotes thereto, and in Management's Discussion and Analysis of Financial Condition and Results of Operations, of the financial condition and results of operations of the Company and its Restricted Subsidiaries separate from the financial condition and results of operations of the Unrestricted Subsidiaries of the Company.

(d) For so long as any Notes remain outstanding, the Company and the Guarantors will furnish to the Holders and to securities analysts and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Section 4.04 Compliance Certificate.

(a) The Company and each Guarantor (to the extent that such Guarantor is so required under the TIA) shall deliver to the Trustee, within 90 days after the end of each fiscal year, an Officers' Certificate stating that a review of the activities of the Company and its Subsidiaries during the preceding fiscal year has been made under the supervision of the signing Officers with a view to determining whether the Company has kept, observed, performed and fulfilled its obligations under this Indenture and the Collateral Documents, and further stating, as to each such Officer signing such certificate, that to the best of his or her knowledge the Company has kept, observed, performed and fulfilled each and every covenant contained in this Indenture and the Collateral Documents and is not in default in the performance or observance of any of the terms, provisions and conditions of this Indenture or the Collateral Documents (or, if a Default or Event of Default has occurred, describing all such Defaults or Events of Default of which he or she may have knowledge and what action the Company is taking or proposes to take with respect thereto) and that to the best of his or her knowledge no event has occurred and remains in existence by reason of which payments on account of the principal of or interest, if any, on the Notes is prohibited or if such event has occurred, a description of the event and what action the Company is taking or proposes to take with respect thereto.

(b) So long as not contrary to the then current recommendations of the American Institute of Certified Public Accountants, the year-end financial statements delivered pursuant to Section 4.03 above shall be accompanied by a written statement of the Company's independent public accountants (who shall be a firm of established national reputation) that in making the examination necessary for certification of such financial statements, nothing has come to their attention that would lead them to believe that the Company has violated any provisions of Article 4 or Article 5 hereof or, if any such violation has occurred, specifying the nature and period of existence thereof, it being understood that such accountants shall not be liable directly or indirectly to any Person for any failure to obtain knowledge of any such violation.

(c) So long as any of the Notes are outstanding, the Company will deliver to the Trustee, forthwith upon any Officer becoming aware of any Default or Event of Default, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto.

Section 4.05 Taxes.

The Company will pay, and will cause each of its Subsidiaries to pay (including any payments required pursuant to the Tax Allocation Agreement) prior to delinquency, all material taxes, assessments, and governmental levies except such as are contested in good faith and by appropriate proceedings or where the failure to effect such payment is not adverse in any material respect to the Holders of the Notes.

Section 4.06 Stay, Extension and Usury Laws.

The Company and each of the Guarantors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of this Indenture; and the Company and each of the Guarantors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of

any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.07 Restricted Payments.

(a) ACEP will not, and will not permit any Restricted Subsidiary to, directly or indirectly:

(1) declare or pay any dividend or make any other payment or distribution on account of ACEP's or any Restricted Subsidiary's Equity Interests (including, without limitation, any payment in connection with any merger or consolidation involving ACEP or any Restricted Subsidiary)

or to the direct or indirect holders of ACEP's or any Restricted Subsidiary's Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of ACEP or to ACEP or a Restricted Subsidiary of ACEP);

(2) purchase, redeem or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving ACEP) any Equity Interests of ACEP or any direct or indirect parent of ACEP;

(3) make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value any Indebtedness of ACEP or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee (excluding any intercompany Indebtedness between or among ACEP and any of its Restricted Subsidiaries), except a payment of interest, Other Liquidated Damages or principal at the Stated Maturity on such subordinated Indebtedness that is not Permitted Affiliate Subordinated Indebtedness;

(4) purchase, redeem, defease or otherwise retire for value or pay any interest, principal or other amount on any Permitted Affiliate Subordinated Indebtedness (other than payment of interest in the form of additional Permitted Affiliate Subordinated Indebtedness or Equity Interests in ACEP (other than Disqualified Stock) or accrual of interest on Permitted Affiliate Subordinated Indebtedness); or

(5) make any Restricted Investment (all such payments and other actions set forth in these clauses (1) through (5) above being collectively referred to as "Restricted Payments"),

unless, at the time of and after giving effect to such Restricted Payment:

(1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Restricted Payment;

(2) ACEP would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the most recently ended four-quarter period for which financial statements are available, have been permitted to incur at least $1.00 of additional Indebtedness pursuant to the Fixed Charge Coverage Ratio test set forth in the first paragraph of Section 4.09; and

(3) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by ACEP and the Restricted Subsidiaries after the Issuance Date (excluding Restricted Payments permitted by clauses (2), (3), (4), (6), (7), (8) and (9) of Section 4.07(b)) is less than the sum, without duplication, of:

(a) 50% of the Consolidated Net Income of ACEP for the period (taken as one accounting period) from the Acquisition Date to the end of ACEP's most recently ended fiscal quarter for which financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit); provided, however, that to the extent any payments pursuant to the Tax Allocation Agreement were excluded from the calculation of Consolidated Net Income during the applicable period, for the purposes of this clause (a), such payments pursuant to the Tax Allocation Agreement will be deducted from Consolidated Net Income, plus

(b) 100% of the aggregate net cash proceeds received by ACEP since the Issuance Date as a contribution to its common equity capital or received as cash proceeds of Permitted Affiliate Subordinated Debt of ACEP or from the issue or sale of Equity Interests of ACEP (excluding Disqualified Stock) or from the issue or sale of convertible or exchangeable Disqualified Stock or convertible or exchangeable debt securities of ACEP that have been converted into or exchanged for such Equity Interests (other than Equity Interests or Disqualified Stock or debt securities) sold to a Subsidiary of ACEP, plus

(c) 100% of the lesser of (1) the aggregate amount received

in cash and the Fair Market Value of property received by means of (A) the sale or other disposition (other than to ACEP or a Restricted Subsidiary) of Restricted Investments made by ACEP or its Restricted Subsidiaries and repurchases and redemptions of such Restricted Investments from ACEP or its Restricted Subsidiaries and repayments of loans or advances which constitute Restricted Investments by ACEP or its Restricted Subsidiaries or (B) the sale (other than to ACEP or a Restricted Subsidiary) of the Capital Stock of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than in each case to the extent the Investment in such Unrestricted Subsidiary was made by a Restricted Subsidiary pursuant to Section 4.07(b)(9) or to the extent such Investment constituted a Permitted Investment) or a dividend from an Unrestricted Subsidiary and (2) the aggregate amount of Restricted Payments made to make the Restricted Investment so sold or disposed of or in the Capital Stock of the Unrestricted Subsidiary so sold or disposed of (provided, however, that if the cash received in any transaction described in clause (A) or (B) of this clause (c) plus the cash received from the disposition of any property received in any such transaction is greater than the amount otherwise calculated under this clause (c), then such greater cash amount may be added to this clause (c) in lieu of such lesser amount), plus

(d) in case, after the Issuance Date, any Unrestricted Subsidiary has been redesignated as a Restricted Subsidiary pursuant to the terms of this Indenture or has been merged, consolidated or amalgamated with or into, or transfers or conveys assets to, or is liquidated into ACEP or a Restricted Subsidiary, and no Default or Event of Default is then occurring or results therefrom, an amount equal to the lesser of (1) the Fair Market Value of the Investments owned by ACEP and the Restricted Subsidiaries in such Unrestricted Subsidiary at the time of the redesignation, combination, transfer or liquidation (or of the assets transferred or conveyed, as applicable) and (2) the aggregate amount of Restricted Payments made in such Unrestricted Subsidiary.

(b) So long as no Default or Event of Default has occurred and is continuing or would be caused thereby, the preceding provisions will not prohibit:

(1) the payment of any dividend or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or redemption payment would have complied with the provisions of this Indenture;

(2) the making of any Restricted Payment in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Subsidiary of ACEP) of, Equity Interests (other than Disqualified Stock) or Permitted Affiliate Subordinated Debt of ACEP or from the substantially concurrent contribution of common equity capital to ACEP; provided, however, that the amount of any such net cash proceeds that are utilized for any such redemption, repurchase, retirement, defeasance or other acquisition will be excluded from Section 4.07(a)(3)(b);

(3) the repurchase, redemption, defeasance or other acquisition or retirement for value of Indebtedness of ACEP or any Guarantor that is contractually subordinated to the Notes or to any Note Guarantee with the net cash proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness;

(4) the payment of any dividend (or, in the case of any partnership or limited liability company, any similar distribution) by a Restricted Subsidiary of ACEP to the holders of its Equity Interests on a pro rata basis;

(5) the repurchase, redemption or other acquisition or retirement for value of any Equity Interests of ACEP, any parent of ACEP or any Restricted Subsidiary of ACEP held by any member of ACEP's (or any of its Restricted Subsidiaries') management pursuant to any management equity subscription agreement, stock option agreement or similar agreement; provided that the aggregate price paid for all such repurchased, redeemed, acquired or retired Equity Interests shall not exceed $2.0 million;

(6) the redemption or repurchase of any Equity Interests or Indebtedness of ACEP or any of its Subsidiaries to the extent required by any Gaming Authority or, if determined in the good faith judgment of the Board of Directors of ACEP as evidenced by a resolution of the Board of Directors that has been delivered to the Trustee, required to prevent the loss or to secure the grant or establishment of any gaming license or other right to conduct lawful gaming operations in the United States;

(7) Permitted Payments to Parent;

(8) Restricted Payments pursuant to the terms of the Acquisition Agreements and the payment of the balance of the intercompany debt owed by Stratosphere Corporation to AREH;

(9) the one-time payment of a distribution of Cash Equivalents and marketable securities to the Parent (the "Parent Distribution") to be paid within twenty days of the Acquisition Date such that, at the Acquisition Date after giving effect to the Parent Distribution, the purchase price of the Acquisition, the payment of the balance of the intercompany debt owed by Stratosphere Corporation to American Real Estate Holdings Limited Partnership and any unpaid fees and expenses relating to the offering of the Notes, ACEP and its Restricted Subsidiaries, on a combined basis, would have cash no less than the sum of (x) $25.0 million and (y) the amount of accrued interest on the Notes from the Issuance Date to, and including, the Acquisition Date; provided, that from the Issuance Date to the date of the Parent Distribution, except as disclosed in the Offering Memorandum and contemplated in the Acquisition Agreements, ACEP shall not take any actions and shall cause its Affiliates not to take any actions that would cause the business of the Properties to be conducted, in any material respect, other than in the ordinary course; and

(10) other Restricted Payments in an aggregate amount since the Issuance Date not to exceed $2.5 million.

(c) For purposes of determining compliance with this Section 4.07, in the event that a proposed Restricted Payment meets the criteria of more than one of the categories of Restricted Payments described in clauses (1) through (10) above, or is permitted to be made pursuant to Section 4.07(a), ACEP shall, in its sole discretion, classify such Restricted Payment in any manner that complies with this Section 4.07.

(d) The amount of all Restricted Payments (other than cash) will be the Fair Market Value on the date of the Restricted Payment of the assets, property or securities proposed to be transferred or issued by ACEP or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

Section 4.08 Dividend and Other Payment Restrictions Affecting Subsidiaries.

(a) ACEP will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or permit to exist or become effective any consensual encumbrance or restriction on the ability of any Restricted Subsidiary to:

(1) pay dividends or make any other distributions on its Capital Stock to ACEP or any of its Restricted Subsidiaries, or with respect to any other interest or participation in, or measured by, its profits, or pay any indebtedness owed to ACEP or any of its Restricted Subsidiaries;

(2) make loans or advances to ACEP or any of its Restricted Subsidiaries; or

(3) sell, lease or transfer any of its properties or assets to ACEP or any of its Restricted Subsidiaries.

However, the restrictions in Section 4.08(a) will not apply to encumbrances or restrictions existing under or by reason of:

(1) agreements in effect on the Acquisition Date and any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of those agreements; provided,

however, that the amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are not materially more restrictive, taken as a whole, with respect to such dividend and other restrictions than those contained in those agreements on the Acquisition Date;

(2) this Indenture, the Notes, the Note Guarantees, the Credit Facilities and the Collateral Documents;

(3) applicable law, rule or order of an applicable governmental body;

(4) any instrument governing Indebtedness or Capital Stock of a Person acquired by ACEP or any Restricted Subsidiary as in effect at the time of such acquisition (except to the extent such Indebtedness or Capital Stock was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person, or the property or assets of the Person, so acquired; provided that, in the case of Indebtedness, such Indebtedness was permitted by the terms of this Indenture to be incurred;

(5) customary non-assignment provisions in leases entered into in the ordinary course of business;

(6) purchase money obligations for property acquired in the ordinary course of business that impose restrictions on that property of the nature described in Section 4.08(a)(3);

(7) any agreement for the sale or other disposition of a Restricted Subsidiary that restricts distributions by that Restricted Subsidiary pending its sale or other disposition;

(8) Permitted Refinancing Indebtedness; provided, however, that the restrictions contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced;

(9) Liens securing Indebtedness otherwise permitted to be incurred under the provisions of Section 4.12; and

(10) provisions with respect to the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, stock sale agreements and other similar agreements entered into in the ordinary course of business.

Section 4.09 Incurrence of Indebtedness and Issuance of Preferred Stock.

(a) ACEP will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur") any Indebtedness (including Acquired Debt), and the Company will not issue any Disqualified Stock and will not permit any of their Restricted Subsidiaries to issue any shares of preferred stock; provided, however, that the Company may incur Indebtedness (including Acquired Debt) or issue Disqualified Stock, and the Guarantors may incur Indebtedness (including Acquired Debt) or issue preferred stock, if the Fixed Charge Coverage Ratio for the Company's most recently ended four full fiscal quarters for which internal financial statements are available immediately preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or such preferred stock is issued, as the case may be, would have been at least 2.0 to 1, determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Indebtedness had been incurred or the Disqualified Stock or the preferred stock had been issued, as the case may be, at the beginning of such four-quarter period.

(b) The provisions of Section 4.09(a) will not prohibit the incurrence of any of the following items of Indebtedness (collectively, "Permitted Debt"):

(1) the incurrence by ACEP and any Guarantor of Indebtedness and

letters of credit under Credit Facilities in an aggregate principal amount at any one time outstanding under this clause (1) (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of ACEP and its Restricted Subsidiaries thereunder) not to exceed $50.0 million less the aggregate amount of all Net Asset Sale Proceeds of Asset Sales applied by ACEP or any of its Restricted Subsidiaries since the Issuance Date to repay any term Indebtedness under a Credit Facility or to repay any revolving credit Indebtedness under a Credit Facility and effect a corresponding commitment reduction thereunder pursuant to Section 4.10(b)(1) hereof;

(2) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes and the related Note Guarantees to be issued on the Issuance Date and the Exchange

Notes and the related Note Guarantees to be issued pursuant to the Registration Rights Agreement;

(3) the incurrence by ACEP and the Guarantors of Indebtedness represented by Capital Lease Obligations, mortgage financings or purchase money obligations, in each case incurred for the purpose of financing all or any part of the purchase price or cost of acquisition, construction or improvement of property, plant or equipment used or to be used in the business of ACEP or such Guarantor, in an aggregate principal amount, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (3), not to exceed $10.0 million at any time outstanding;

(4) the incurrence by ACEP and the Guarantors of Permitted Refinancing Indebtedness in exchange for, or the net proceeds of which are used to refund, refinance or replace Indebtedness (other than intercompany Indebtedness) that was incurred under Section 4.09(a) or clauses (2), (3), (4), (10), (11) or (14) of this Section 4.09(b);

(5) the incurrence by ACEP and its Restricted Subsidiaries of intercompany Indebtedness between or among ACEP and any of its Restricted Subsidiaries; provided, however, that:

(a) if ACEP is the obligor on such Indebtedness, such Indebtedness must be expressly subordinated to the prior payment in full in cash of all Obligations with respect to the Notes;

(b) if a Guarantor is the obligor on such Indebtedness, such Indebtedness is expressly subordinated to the prior payment in full in cash of its Note Guarantee; and

(c) (i) any subsequent issuance or transfer of Equity Interests that results in any such Indebtedness being held by a Person other than ACEP or a Restricted Subsidiary of ACEP and (ii) any sale or other transfer of any such Indebtedness to a Person that is not either ACEP or a Restricted Subsidiary of ACEP shall be deemed, in each case, to constitute an incurrence of such Indebtedness by ACEP or such Restricted Subsidiary, as the case may be, that was not permitted by this clause (5);

provided that in the case of clauses (a) and (b), that no restriction on the payment of principal, interest or other obligations in connection with such intercompany Indebtedness shall be required by such subordinated terms except during the occurrence and continuation of a Default or Event of Default;

(6) the incurrence by ACEP and any of its Restricted Subsidiaries of Hedging Obligations that are incurred in the normal course of business;

(7) the Guarantee by ACEP or any of the Guarantors of Indebtedness of the Company or a Restricted Subsidiary of ACEP that was permitted to be incurred by another provision of this Section 4.09; provided that if the Indebtedness being guaranteed is subordinated to or pari passu with the Notes, then the Guarantee shall be subordinated or pari passu, as applicable, to the same extent as the Indebtedness guaranteed;

(8) the incurrence by ACEP or any of its Restricted Subsidiaries of Indebtedness in respect of workers' compensation claims, self-insurance

obligations, bankers' acceptances, performance and surety bonds in the ordinary course of business;

(9) the incurrence by ACEP or any of its Restricted Subsidiaries of Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Indebtedness is covered within five Business Days;

(10) the incurrence by ACEP and its Restricted Subsidiaries of the Existing Indebtedness;

(11) the incurrence by ACEP or any of its Restricted Subsidiaries of Non-Recourse Financing used to finance the construction, purchase or lease of personal or real property used in the business of ACEP or such Restricted Subsidiary; provided, that the Indebtedness incurred pursuant to this clause (11) (including any refinancings thereof pursuant to clause (4) above) shall not exceed $15.0 million outstanding at any time;

(12) Indebtedness arising from any agreement entered into by ACEP or any of its Restricted Subsidiaries providing for indemnification, purchase price adjustment or similar obligations, in each case, incurred or assumed in connection with an Asset Sale;

(13) the incurrence by ACEP or any Restricted Subsidiary of Permitted Affiliate Subordinated Indebtedness;

(14) the incurrence by ACEP of Additional Notes used for Property Improvements, in an aggregate principal amount not to exceed 2.0 times the net cash proceeds received by ACEP after the Acquisition Date from Equity Offerings and the issuance of Permitted Affiliate Subordinated Debt, the net cash proceeds of which Equity Offerings and the issuance of Permitted Affiliate Subordinated Debt are also used in Property Improvements; and

(15) the incurrence by ACEP or any of its Restricted Subsidiaries of additional Indebtedness in an aggregate principal amount at any time outstanding, including all Permitted Refinancing Indebtedness incurred to refund, refinance or replace any Indebtedness incurred pursuant to this clause (15), not to exceed $10.0 million at any one time outstanding.

The Company and their Restricted Subsidiaries will not incur any Indebtedness (including Permitted Debt) that is contractually subordinated in right of payment to any other Indebtedness of the Company or its Restricted Subsidiaries unless such Indebtedness is also contractually subordinated in right of payment to the Notes or the applicable Note Guarantee on substantially identical terms; provided, however, that no Indebtedness of the Company and its Restricted Subsidiaries shall be deemed to be contractually subordinated in right of payment to any other Indebtedness of the Company or its Restricted Subsidiaries for purposes of this paragraph solely by virtue of being unsecured or secured to a lesser extent or on a junior Lien basis.

For purposes of determining compliance with this Section 4.09, in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Debt described in clauses (1) through (15) above or is entitled to be incurred pursuant to Section 4.09(a), in each case, as of the date of incurrence thereof, the Company shall, in their sole discretion, classify (or later reclassify in whole or in part, in its sole discretion) such item of Indebtedness in any manner that complies with this Section 4.09 and such Indebtedness will be treated as having been incurred pursuant to such clauses or Section 4.09(a), as the case may be, designated by the Company.

The accrual of interest, the accretion or amortization of original issue discount, the payment of interest on any Indebtedness in the form of additional Indebtedness with the same terms, the

reclassification of preferred stock as Indebtedness due to a change in accounting principles, and the payment of dividends on Disqualified Stock in the

form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness or an issuance of Disqualified Stock for purposes of this Section 4.09; provided, that in each such case, that the amount thereof shall be included in Fixed Charges of ACEP as accrued (to the extent applicable under the definition of Fixed Charges). Notwithstanding any other provision of this Section 4.09, the maximum amount of Indebtedness that ACEP or any Restricted Subsidiary may incur pursuant to this Section 4.09 shall not be deemed to be exceeded solely as a result of fluctuations in exchange rates or currency values.

The amount of any Indebtedness outstanding as of any date will be:

(1) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(2) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(3) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of:

(a) the Fair Market Value of such assets at the date of determination; and

(b) the amount of the Indebtedness of the other Person.

Upon entering into or refinancing or replacement of the Credit Facilities or any portion thereof with a lender that was not party to the Intercreditor Agreement or the incurrence of any Indebtedness permitted by this Indenture to be First Lien Obligations, the Trustee shall enter into an intercreditor agreement with such lender with terms that are no less favorable to the Trustee or the Holders of Notes than those contained in the Intercreditor Agreement.

Section 4.10 Asset Sales.

(a) ACEP will not, and will not permit any Restricted Subsidiary to, consummate an Asset Sale unless:

(1) no Default or Event of Default has occurred and is continuing or would occur as a consequence of such Asset Sale;

(2) ACEP (or the Restricted Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value of the assets sold, leased, transferred, conveyed or otherwise disposed of or Equity Interests issued or sold or otherwise disposed of;

(3) with respect to any Asset Sale involving consideration or property in excess of $2.5 million, such Fair Market Value is evidenced by a resolution of the Board of Directors set forth in an Officers' Certificate delivered to the Trustee;

(4) at least 75% of the consideration received in the Asset Sale by ACEP or such Restricted Subsidiary is in the form of cash or Cash Equivalents. For purposes of this clause (4), each of the following will be deemed to be cash:

(a) any liabilities, as shown on ACEP's or such Restricted Subsidiary's most recent balance sheet, of ACEP or any Restricted Subsidiary (other than contingent liabilities and liabilities that are by their terms subordinated to the Notes or any Note Guarantee which may be assumed only if such liabilities are deemed to be Restricted Payments and such Restricted Payment may then be made) that are assumed by the transferee of any such assets pursuant to a customary novation agreement that releases ACEP or such Restricted Subsidiary from further liability; and

(b) any securities, notes or other obligations received by ACEP or any such Restricted Subsidiary from such transferee that are converted by ACEP or such Restricted Subsidiary into cash within 30 days, to the extent of the cash received in that conversion; and

(5) the Board of Directors has determined in good faith that the Asset Sale complies with the clauses (2), (3) and (4) of this Section 4.10.

(b) Within one year after the receipt of any Net Asset Sale Proceeds, ACEP or the Restricted Subsidiary may apply those Net Asset Sale Proceeds at its option:

(1) to repay First Lien Obligations or any other Indebtedness that is pari passu with the Notes, including any Notes and, if the Indebtedness repaid is revolving credit Indebtedness, to correspondingly reduce commitments with respect thereto;

(2) to acquire all or substantially all of the assets of, or a majority of the Voting Stock of, another Principal Business;

(3) to make an Investment in or expenditures for acquiring or constructing properties and assets that replace the properties and assets that were the subject of the Asset Sale; or

(4) to acquire, construct, repair or rebuild other assets or property, other than current assets, that are used or useful in a Principal Business;

provided, however, that with respect to any assets that are acquired or constructed or Voting Stock that is acquired with such Net Asset Sale Proceeds, ACEP or the applicable Restricted Subsidiary, as the case may be, promptly grants to the Trustee, on behalf of the holders of the Notes, a second-priority security interest on any such assets or Voting Stock on the terms set forth in this Indenture and the Collateral Documents. Pending the final application of any Net Asset Sale Proceeds, ACEP or the applicable Restricted Subsidiary may temporarily reduce revolving credit borrowings or otherwise invest the Net Asset Sale Proceeds in any manner that is not prohibited by this Indenture.

(c) Any Net Asset Sale Proceeds that are not applied or invested as provided in Section 4.10(b) (or in the case of clauses (2), (3) or (4) of Section 4.10(b), contracted or committed to within one year; provided that such acquisition, investment, construction, repair or reconstruction is completed within two years of the date of such contract or commitment) will constitute "Excess Proceeds". Within five days of each date on which the aggregate amount of Excess Proceeds exceeds $5.0 million, the Company will make an offer (an "Asset Sale Offer") to all holders of Notes to purchase the maximum principal amount of Notes and, if the Company is required to do so under the terms of any other Indebtedness that is pari passu with the Notes, such other Indebtedness on a pro rata basis with the Notes, that may be purchased out of the Excess Proceeds. The offer price in any Asset Sale Offer will be equal to 100% of principal amount plus accrued and unpaid interest and Liquidated Damages, if any, to the date of purchase, and will be payable in cash. If any Excess Proceeds remain after consummation of the purchase of all properly tendered and not withdrawn Notes pursuant to an Asset Sale Offer, ACEP may

use such remaining Excess Proceeds for any purpose not otherwise prohibited by this Indenture and the Collateral Documents. If the aggregate principal amount of Notes and other pari passu Indebtedness tendered into such Asset Sale Offer (together with any other pari passu Indebtedness expected to be repaid from such Excess Proceeds) exceeds the amount of Excess Proceeds, the Trustee shall select the Notes and such other pari passu Indebtedness to be purchased on a pro rata basis based on the principal amount of Notes and such other Indebtedness tendered (or otherwise expected to be repaid). Upon completion of any Asset Sale Offer, the amount of Excess Proceeds will be reset at zero. The Company may commence an Asset Sale Offer without having to wait for the expiration of the one year period.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent such laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Sections 3.11 or 4.10 of this Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have

breached its obligations under Section 3.11 or this Section 4.10 by virtue of such compliance.

Section 4.11 Transactions with Affiliates.

(a) ACEP will not, and will not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, any Affiliate of ACEP (each, an "Affiliate Transaction"), unless:

(1) the Affiliate Transaction is on terms that are not materially less favorable to ACEP or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by ACEP or such Restricted Subsidiary with an unrelated Person as determined in good faith by the Board of Directors of ACEP; and

(2) ACEP delivers to the Trustee:

(a) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $2.0 million, a resolution of the Board of Directors of ACEP set forth in an Officers' Certificate certifying that such Affiliate Transaction complies with this Section 4.11 and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors of ACEP; and

(b) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of $10.0 million, an opinion as to the fairness to ACEP or such Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm of recognized standing.

(b) The following items shall not be deemed to be Affiliate Transactions and, therefore, will not be subject to the provisions of Section 4.11(a):

(1) any employment agreement, employee benefit plan, officer or director indemnification agreement or any similar arrangement entered into by ACEP or any of its Restricted Subsidiaries in the ordinary course of business and payments pursuant thereto;

(2) transactions between or among ACEP and/or its Restricted Subsidiaries;

(3) payment of reasonable directors' fees to Persons who are not otherwise Affiliates of ACEP;

(4) any issuance of Equity Interests (other than Disqualified Stock) of ACEP to Affiliates of ACEP;

(5) Restricted Payments that do not violate Section 4.07 hereof;

(6) the transactions pursuant to the Acquisition Agreements and the transactions contemplated in the Offering Memorandum under the caption "Use of Proceeds;"

(7) Permitted Affiliate Subordinated Indebtedness;

(8) transactions between ACEP and/or any of its Restricted Subsidiaries, on the one hand, and other Affiliates, on the other hand, for the provision of goods or services in the ordinary course of business by such other Affiliates; provided that such other Affiliate is in the business of providing such goods or services in the ordinary course of business to unaffiliated third parties and the terms and pricing for such goods and services overall are not less favorable to ACEP and/or its Restricted Subsidiaries than the terms and pricing upon which such goods and services are provided to unaffiliated third parties;

(9) loans or advances to employees in the ordinary course of business not to exceed $1.0 million in the aggregate at any one time

outstanding;

(10) the provision of accounting, financial, management, information technology and other ancillary services to Affiliates, provided that ACEP or its Restricted Subsidiaries are paid a fee equal to its out of pocket costs and allocated overhead (including a portion of salaries and benefits) as determined by ACEP in its reasonable judgment; provided further that this services under this clause shall not include providing complimentaries or other benefits to customers of an Affiliate; and

(11) Permitted Payments to Parent.

Section 4.12 Liens.

ACEP will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien of any kind on any asset, now owned or hereafter acquired, or any income or profits therefrom, or assign or convey any right to receive income therefrom, except Permitted Liens.

Section 4.13 Business Activities.

For so long as any Notes are outstanding, the Company shall not, and shall not permit any of the Restricted Subsidiaries to, engage in any business or activity other than the Principal Business, except to such extent as would not be material to the Company and its Subsidiaries taken as a whole.

Section 4.14 Corporate Existence.

Subject to Article 5 hereof, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect:

(1) its corporate existence, and the corporate, partnership or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended from time to time) of the Company or any such Subsidiary; and

(2) the rights (charter and statutory), licenses and franchises of the Company and its Subsidiaries; provided, however, that the Company shall not be required to preserve any such right, license or franchise, or the corporate, partnership or other existence of any of its Subsidiaries, if the Board of Directors shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and that the loss thereof is not adverse in any material respect to the Holders of the Notes.

Section 4.15 Offer to Repurchase Upon Change of Control.

(a) Upon the occurrence of a Change of Control, the Company will make an offer (a "Change of Control Offer") to each Holder to repurchase all or any part (equal to $1,000 or an integral multiple of $1,000) of each Holder's Notes at a purchase price equal to 101% of the aggregate principal amount thereof plus accrued and unpaid interest and Liquidated Damages, if any, on the Notes repurchased, if any, to the date of purchase, subject to the rights of Noteholders on the relevant record date to receive interest due on the relevant interest payment date (the "Change of Control Payment"). Within thirty days following any Change of Control, the Company will mail a notice to each Holder describing the transaction or transactions that constitute the Change of Control and stating:

(1) that the Change of Control Offer is being made pursuant to this Section 4.15 and that all Notes tendered will be accepted for payment;

(2) the purchase price and the purchase date, which shall be no earlier than 30 days and no later than 60 days from the date such notice is mailed (the "Change of Control Payment Date");

(3) that any Note not tendered will continue to accrue interest;

(4) that, unless the Company defaults in the payment of the Change of Control Payment, all Notes accepted for payment pursuant to the Change of Control Offer will cease to accrue interest after the Change of Control Payment Date;

(5) that Holders electing to have any Notes purchased pursuant to a Change of Control Offer will be required to surrender the Notes, with the form entitled "Option of Holder to Elect Purchase" attached to the Notes completed, or transfer by book-entry transfer, to the Paying Agent at the address specified in the notice prior to the close of business on the third Business Day preceding the Change of Control Payment Date;

(6) that Holders will be entitled to withdraw their election if the Paying Agent receives, not later than the close of business on the second Business Day preceding the Change of Control Payment Date, a telegram, telex, facsimile transmission or letter setting forth the name of the Holder, the principal amount of Notes delivered for purchase, and a statement that such Holder is withdrawing his election to have the Notes purchased; and

(7) that Holders whose Notes are being purchased only in part will be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered, which unpurchased portion must be equal to $1,000 in principal amount or an integral multiple thereof.

The Company will comply with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with the repurchase of the Notes as a result of a Change in Control. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Sections 3.11 or 4.15 of this Indenture, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 3.11 or this Section 4.15 by virtue of such compliance.

(b) On the Change of Control Payment Date, the Company will, to the extent lawful:

(1) accept for payment all Notes or portions of Notes properly tendered and not withdrawn pursuant to the Change of Control Offer;

(2) deposit with the Paying Agent an amount equal to the Change of Control Payment in respect of all Notes or portions of Notes properly tendered; and

(3) deliver or cause to be delivered to the Trustee the Notes so accepted together with an Officers' Certificate stating the aggregate principal amount of Notes or portions of Notes being purchased by the Company.

The Paying Agent will promptly mail (but in any case not later than five days after the Change of Control Payment Date) to each Holder of Notes properly tendered the Change of Control Payment for such Notes, and the Trustee will promptly authenticate and mail (or cause to be transferred by book entry) to each Holder a new Note equal in principal amount to any unpurchased portion of the Notes surrendered, if any; provided that any new Note will be in a principal amount of $1,000 or an integral multiple of $1,000. The Company will publicly announce the results of the Change of Control Offer on or as soon as practicable after the Change of Control Payment Date.

(c) Notwithstanding anything to the contrary in this Section 4.15, the Company will not be required to make a Change of Control Offer upon a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Section 4.15 and Section 3.11 hereof and purchases all Notes validly tendered and not withdrawn under the Change of Control Offer, or (2) notice of redemption has been given pursuant to Section 3.07 hereof, unless and until there is a default in payment of the applicable redemption price.

Section 4.16 Events of Loss

(a) Within one year (or two years in the case of clause (1) below) after (1) any Event of Loss with respect to any of the Properties, or any other assets or property, with a Fair Market Value (or replacement cost, if greater) in excess of $15.0 million, ACEP or the affected Restricted Subsidiary, as the case may be, may apply the Net Loss Proceeds from such Event of Loss in any manner permitted by clauses (1) through (4) of Section 4.10(b) for Net Asset Sale Proceeds from an Asset Sale or to the rebuilding or repair of the Subject Property, or (2) any other Event of Loss, ACEP or the affected Restricted Subsidiary, as the case may be, may apply the Net Loss Proceeds from such Event of Loss to repay First Lien Obligations or any indebtedness pari passu with the Notes, including any Notes, or to the rebuilding, repair, replacement or construction of improvements to the property affected by such Event of Loss (the "Subject Property"), with no concurrent obligation to make any purchase of any Notes; provided, however, that ACEP delivers to the Trustee:

(1) within either (i) 150 days of such Event of Loss a written opinion from a reputable contractor that the Subject Property can be rebuilt, repaired, replaced or constructed in,

and operating in, substantially the same condition (or better) as existed prior to the Event of Loss within 24 months of the Event of Loss or (ii) 60 days of such Event of Loss a written opinion from a reputable contractor that the Subject Property can be rebuilt, repaired, replaced or constructed in, and operating in, substantially the same condition (or better) as existed prior to the Event of Loss within two years of the receipt of Net Loss Proceeds; and

(2) an Officers' Certificate (delivered concurrently with the opinion specified in clause (i) or (ii) above) certifying that ACEP has available from Net Loss Proceeds or other sources sufficient funds to complete the rebuilding, repair, replacement or construction referred to in clause (1) above.

(b) Any Net Loss Proceeds from any Event of Loss that are not applied or permitted to be reinvested as provided in Section 4.16(a) will constitute "Excess Loss Proceeds." When the aggregate amount of Excess Loss Proceeds exceeds $5.0 million, the Company will make an offer (an "Event of Loss Offer") to all holders of Notes to purchase the maximum principal amount of Notes and, if the Company is required to do so under the terms of any other Indebtedness that is pari passu with the Notes, such other Indebtedness on a pro rata basis with the Notes, that may be purchased out of the Excess Loss Proceeds. The offer price in any Event of Loss Offer will be equal to 100% of principal amount plus accrued and unpaid interest and Liquidated Damages, if any, to the date of purchase, and will be payable in cash. If any Excess Loss Proceeds remain after consummation of the purchase of all properly tendered and not withdrawn Notes pursuant to an Event of Loss Offer, ACEP may use such remaining Excess Loss Proceeds for any purpose not otherwise prohibited by this Indenture and the Collateral Documents. If the aggregate principal amount of Notes and other pari passu Indebtedness tendered into such Event of Loss Offer (together with any pari passu Indebtedness expected to be repaid from such Event of Loss proceeds) exceeds the amount of Excess Loss Proceeds, the Trustee will select the Notes and such other pari passu Indebtedness to be purchased on a pro rata basis based on the principal amount of Notes and such other Indebtedness tendered (or expected to be repaid). Upon completion of any such Event of Loss Offer, the amount of Excess Loss Proceeds will be reset at zero.

(c) In the event of an Event of Loss pursuant to clause (3) of the definition of "Event of Loss" with respect to any property or assets that have a Fair Market Value (or replacement cost, if greater) in excess of $5.0 million, ACEP or the affected Restricted Subsidiary, as the case may be, will be required to receive consideration and with respect to any Event of Loss of any portion of the hotel, casino or parking structure and other property comprising part of the Properties, at least 75% of which is in the form of cash or Cash Equivalents.

Section 4.17 Sale and Leaseback Transactions.

The Company will not, and will not permit any of its Restricted Subsidiaries to, enter into any sale and leaseback transaction; provided that the Company or any Restricted Subsidiary may enter into a sale and leaseback transaction if:

(1) the Company or that Restricted Subsidiary, as applicable, could have (a) incurred Indebtedness in an amount equal to the Attributable Debt relating to such sale and leaseback transaction under the Fixed Charge Coverage Ratio test in Section 4.09(a) hereof and (b) incurred a Lien to secure such Indebtedness pursuant to the provisions of Section 4.12 hereof;

(2) the gross cash proceeds of that sale and leaseback transaction are at least equal to the Fair Market Value set forth in an Officers' Certificate delivered to the Trustee, of the property that is the subject of that sale and leaseback transaction; and

(3) the transfer of assets in that sale and leaseback transaction is permitted by, and the Company applies the proceeds of such transaction in compliance with, Section 4.10 hereof.

Section 4.18 Insurance.

ACEP from and after the Acquisition Date will, and will cause the Restricted Subsidiaries to, maintain the specified levels of insurance set forth in the Collateral Documents, which shall not be less than the levels required in any applicable Gaming License.

Section 4.19 Limitation on Issuances and Sales of Capital Stock of Restricted Subsidiaries.

(a) ACEP will not, and will not permit any Restricted Subsidiary to, transfer, convey, sell, lease or otherwise dispose of any Capital Stock of any Restricted Subsidiary to any Person (other than to ACEP or to any Restricted Subsidiary), unless:

(1) such transfer, conveyance, sale, lease or other disposition is of all the Capital Stock of such Restricted Subsidiary; and

(2) the Net Asset Sale Proceeds from such transfer, conveyance, sale, lease or other disposition are applied in accordance with Section 4.10 hereof;

provided, however, that this clause (a) will not apply to any pledge of Capital Stock of any Restricted Subsidiary securing First Lien Obligations, including the Credit Facilities, or any exercise of remedies in connection therewith; and

(b) ACEP will not permit any Restricted Subsidiary to issue any of its Equity Interests (other than, if necessary, shares of its Capital Stock constituting directors' qualifying shares and shares of Capital Stock of foreign Subsidiaries issued to foreign nationals to the extent required under applicable law) to any Person other than ACEP or any Restricted Subsidiary.

Section 4.20 Additional Note Guarantees.

If the Company or any of its Restricted Subsidiaries acquires or creates another Restricted Subsidiary after the date of this Indenture and Investments in that Restricted Subsidiary exceed the amount described in clause (1) of the definition of "Permitted Investments", then the Company will cause that newly acquired or created Restricted Subsidiary (including, but not limited to, the Acquired Subsidiaries) to (1) execute and deliver to the Trustee a Note Guarantee pursuant to a supplemental indenture and supplemental Collateral Documents in form and substance reasonably satisfactory to the Trustee pursuant to which that Restricted Subsidiary will unconditionally Guarantee, all of the Company's obligations under the Notes, this Indenture and the Collateral Documents on the terms set forth in this Indenture and (2) deliver an Opinion of Counsel to the Trustee within ten Business Days of the date on which it was acquired or created to the effect that such supplemental indenture and supplemental Collateral Documents have been duly authorized, executed and delivered by that Restricted Subsidiary and constitute the valid and binding agreements of that Restricted Subsidiary, enforceable in accordance with its terms (subject to customary exceptions). The form of such Note Guarantee is attached as Exhibit E hereto.

Section 4.21 Restrictions on Leasing and Dedication of Property.

(a) ACEP will not, and will not permit any of the Restricted Subsidiaries to lease, sublease, or grant a license, concession or other agreement to occupy, manage or use, as lessor or sublessor, any

real or personal Project Assets owned or leased by ACEP or any Restricted Subsidiary for annual lease base rent, excluding common area maintenance and percentage rent, exceeding $2.0 million with respect to any individual transaction (each, a "Lease Transaction"), other than the following Lease Transactions:

(1) ACEP or any Restricted Subsidiary may enter into a Lease Transaction with respect to any Project Assets, within or outside the Properties, or with any Person, provided that, in the reasonable opinion of ACEP, (a) such Lease Transaction will not materially interfere with, impair or detract from the operations of any of the Project Assets, and will in the reasonable judgment of ACEP enhance the value and operations of the Properties and (b) such Lease Transaction is at a fair market rent (in light of other similar or comparable prevailing commercial transactions or in the reasonable judgment of ACEP, otherwise enhances the value and operations of any of the Properties) and contains such other terms such that the Lease Transaction, taken as a whole, is commercially reasonable and fair to ACEP or such Restricted Subsidiary;

(2) the transactions and agreements described under Section 4.11 to the extent such transactions or agreements constitute Lease Transactions;

(3) ACEP or any Restricted Subsidiary may enter into a management or operating agreement with respect to any Project Asset, including any hotel with any Person (other than an Unrestricted Subsidiary or other Affiliate of the Principal (other than ACEP or any Restricted Subsidiary)); provided that (i) the manager or operator has experience in managing or operating similar operations or assets and (ii) such management or operating agreement is on commercially reasonable and fair terms to ACEP or such Restricted Subsidiary (in either case, in the reasonable judgment of ACEP); and

(4) ACEP and any Restricted Subsidiary of ACEP may enter into a Lease Transaction with any of ACEP or any Restricted Subsidiary.

(b) Notwithstanding Section 4.21(a), (1) no gaming or casino operations may be conducted on any Project Asset that is the subject of such Lease Transaction other than by ACEP or a Restricted Subsidiary; and (2) no Lease Transaction may provide that ACEP or any Restricted Subsidiary may subordinate its fee or leasehold interest to any lessee or any party providing financing to any lessee.

(c) The Trustee shall at the request of ACEP or any Restricted Subsidiary enter into a commercially customary leasehold non-disturbance and attornment agreement with the lessee under any Lease Transaction permitted under this Section 4.21. Such agreement, among other things, shall provide that if the interests of ACEP (or in the case of a Lease Transaction being entered by a Restricted Subsidiary, the interests of the Restricted Subsidiary) in the Project Assets subject to the Lease Transaction are acquired by the Trustee (on behalf of the holders of the Notes), whether by purchase and sale, foreclosure, or deed in lieu of foreclosure or in any other way, or by a successor to the Trustee, including without limitation a purchaser at a foreclosure sale, then in each case subject to any applicable law or Gaming License, (1) the interests of the lessee in the Project Assets subject to the Lease Transaction shall continue in full force and effect and shall not be terminated or disturbed, except in accordance with the lease documentation applicable to the Lease Transaction, and (2) the lessee in the Lease Transaction shall attorn to and be bound to the Trustee (on behalf of the holders), its successors and assigns under all terms, covenants and conditions of the lease documentation applicable to the Lease Transaction. Such agreement shall also contain such other provisions that are commercially customary and that will not materially and adversely affect the Lien granted by the Collateral Documents (other than pursuant to the terms of the applicable non-disturbance agreement) as certified to the Trustee by an Officer of ACEP.

Section 4.22 Designation of Restricted and Unrestricted Subsidiaries.

The Board of Directors of ACEP may designate any Restricted Subsidiary to be an Unrestricted Subsidiary if that designation would not cause a Default; provided that in no event shall Project Assets of any of the Properties be transferred to or held by an Unrestricted Subsidiary. If a Restricted Subsidiary is designated as an Unrestricted Subsidiary, the aggregate Fair Market Value of all outstanding Investments owned by ACEP and its Restricted Subsidiaries in the Subsidiary designated as an Unrestricted Subsidiary will be deemed to be an Investment made as of the time of the designation and will reduce the amount available for Restricted Payments under Section 4.07 or under one or more clauses of the definition of Permitted Investments, as determined by ACEP. That designation will only be permitted if the Investment would be permitted at that time and if the Restricted Subsidiary otherwise meets the definition of an Unrestricted Subsidiary. The Board of Directors of ACEP may redesignate any Unrestricted Subsidiary to be a Restricted Subsidiary if that redesignation would not cause a Default.

Any designation of a Subsidiary of ACEP as an Unrestricted Subsidiary will be evidenced to the Trustee by filing with the Trustee a certified copy of a resolution of the Board of Directors giving effect to such designation and an Officers' Certificate certifying that such designation complied with the preceding conditions and was permitted by Section 4.07 hereof. If, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements as an Unrestricted Subsidiary, it will thereafter cease to be an Unrestricted Subsidiary for purposes of this Indenture and any Indebtedness of such Subsidiary will be deemed to be incurred by a Restricted Subsidiary of ACEP as of such date and, if such Indebtedness is not permitted to be incurred as of such date under Section 4.09 hereof, ACEP will be in Default. The Board of Directors of ACEP may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of ACEP; provided that such designation will be deemed to be an incurrence of Indebtedness by a Restricted Subsidiary of ACEP of any outstanding Indebtedness of such Unrestricted Subsidiary, and such designation will only be permitted if (1) such Indebtedness is permitted under Section 4.09, calculated on a pro forma basis as if such designation had occurred at the beginning of the four-quarter reference period; and (2) no Default or Event of Default would be in existence following such designation.

Section 4.23 Further Assurances.

ACEP shall (and shall cause each of the Restricted Subsidiaries to) execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register, any and all such further acts, deeds, conveyances, security agreements, mortgages, assignments, estoppel certificates, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as may be reasonably required from time to time in order: (1) to carry out more effectively the express purposes of the Collateral Documents; (2) to subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests required to be encumbered thereby and contemplated thereby; (3) to perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and the Liens intended to be created thereby and contemplated thereby; and (4) to better assure, convey, grant, assign, transfer, preserve, protect and confirm to the Trustee any of the rights granted or now or hereafter intended by the parties thereto to be granted to the Trustee or under any other instrument executed in connection therewith or granted to ACEP under the Collateral Documents or under any other instrument executed in connection therewith.

ARTICLE 5.
SUCCESSORS

Section 5.01 Merger, Consolidation, or Sale of Assets.

Neither ACEP nor any Guarantor shall, directly or indirectly: (1) consolidate or merge with or into another Person (whether or not ACEP or such Guarantor is the surviving corporation), or (2) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of

ACEP or any Guarantor taken as a whole, in one or more related transactions, to another Person; unless:

(1) either:

(A) the ACEP or such Guarantor, as the case may be, is the surviving corporation; or

(B) the Person formed by or surviving any such consolidation or merger (if other than ACEP or such Guarantor, as the case may be) or to which such sale, assignment, transfer, conveyance or other disposition has been made is a corporation, limited liability company or limited partnership entity organized or existing under the laws of the United States, any state of the United States or the District of Columbia;

(2) the Person formed by or surviving any such consolidation or merger (if other than ACEP or such Guarantor, as the case may be) or the Person to which such sale, assignment, transfer, conveyance or other disposition has been made assumes all the obligations of the ACEP or such Guarantor, as the case may be, under the Notes, the Note Guarantees, this Indenture, the Registration Rights Agreement and the Collateral Documents, as applicable, pursuant to agreements reasonably satisfactory to the Trustee;

(3) immediately after such transaction, no Default or Event of Default exists;

(4) ACEP or such Guarantor, as the case may be, or the Person formed by or surviving any such consolidation or merger (if other than ACEP or such Guarantor, as the case may be), or to which such sale, assignment, transfer, conveyance or other disposition has been made has, on the date of such transaction after giving pro forma effect thereto and any related financing transactions as if the same had occurred at the beginning of the applicable four-quarter period, a Fixed Charge Coverage Ratio not less than the Fixed Charge Coverage Ratio immediately preceding such transactions as such Fixed Charge Coverage Ratio test is set forth in Section 4.09(a) hereof;

(5) such transaction would not result in the loss or suspension or material impairment of any of ACEP's or any Guarantor's Material Gaming Licenses, unless a comparable replacement Gaming License is effective prior to or simultaneously with such loss, suspension or material impairment;

(6) such transaction would not require any Holder or Beneficial Owner of Notes in their capacity as such to obtain a Gaming License or be qualified or found suitable under the law of any applicable gaming jurisdiction; provided that such Holder or Beneficial Owner would not have been required to obtain a Gaming License or be qualified or found suitable under the laws of any applicable gaming jurisdiction in the absence of such transaction; and

(7) ACEP has delivered to the Trustee an Officers' Certificate and opinion of counsel, each stating that such transaction complies with the terms of this Indenture.

ACEP will not have to comply with clause (4) above in connection with any merger or consolidation or the sale, assignment, transfer, conveyance or other disposition of all or substantially all of its properties or assets with an Affiliate that has no material assets or liabilities where the primary purpose of such transaction is to change ACEP into a corporation or other form of business entity and such transaction does not cause the realization of any material federal or state tax liability that will be paid by ACEP or any Restricted Subsidiary. For purposes of this paragraph, the term material refers to any assets, liabilities or tax liabilities that are greater than $1.0 million.

In addition, the Company will not, directly or indirectly, lease all or substantially all of its properties or assets, in one or more related transactions, to any other Person. In the case of a lease of all or

substantially all of the assets of ACEP, ACEP will not be released from its obligations under the Notes or this Indenture.

(b) Section 5.01(a) will not apply to:

(1) a merger of ACEP or ACEP Finance with an Affiliate solely for the purpose of reorganizing ACEP or ACEP Finance in another jurisdiction; or

(2) any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets between or among ACEP, ACEP Finance and the Restricted Subsidiaries or between or among Restricted Subsidiaries.

Section 5.02 Successor Corporation Substituted.

Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets of the Company in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof, the successor corporation formed by such consolidation or into or with which the Company is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Indenture referring to the "Company" shall refer instead to the successor corporation and not to the Company), and may exercise every right and power of the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; provided, however, that the predecessor Company shall not be relieved from the obligation to pay the principal of and interest on the Notes except in the case of a sale of all of the Company's assets in a transaction that is subject to, and that complies with the provisions of, Section 5.01 hereof.

ARTICLE 6.
DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

Each of the following is an "Event of Default":

(1) the Company defaults for 30 days in the payment when due of interest on, or Liquidated Damages with respect to, the Notes or under any Note Guarantee;

(2) the Company defaults in the payment when due and payable (at maturity, upon redemption or otherwise) of the principal of, or premium, if any, on the Notes or under any Note Guarantee;

(3) the Company or any of its Restricted Subsidiaries fails to comply with the provisions of Sections 3.08, 3.09, 4.10, 4.15 or 4.16 hereof;

(4) the Company or any of its Restricted Subsidiaries fails to comply with the provisions of Sections 4.07, 4.09 or 5.01 hereof for 30 days after notice to the Company by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class;

(5) the Company or any of its Restricted Subsidiaries fails to observe or perform any other covenant, representation, warranty or other agreement in this Indenture or the Notes, the Note Guarantees or the Collateral Documents for 60 days after notice to the Company by the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding voting as a single class;

(6) a default occurs under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any Indebtedness for money borrowed by ACEP or any of the Restricted Subsidiaries or default on any Guarantee by ACEP or any of the Restricted Subsidiaries of Indebtedness of a third party, whether such Indebtedness or Guarantee now exists, or is created after the Issuance

Date (other than any Non-Recourse Debt or any Guarantee related to Non-Recourse Debt), if that default:

(A) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness when due at final maturity, giving effect to any grace period or waiver provided in such Indebtedness (a "Payment Default"); or

(B) results in the acceleration of such Indebtedness prior to its express maturity,

and, in each case (other than a Payment Default or an acceleration of first-lien Indebtedness), the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there has been a Payment Default then exists or with respect to which the maturity thereof has been so accelerated or which has not been paid at maturity, aggregates $5.0 million or more;

(7) failure of the Escrow Agreement, at any time, to be in full force and effect (unless the escrow funds are released by the Escrow Agent) or any contest by the Company or any of the Guarantors of the validity or enforceability of the Escrow Agreement;

(8) a final judgment or final judgments for the payment of money are entered by a court or courts of competent jurisdiction against the Company or any of its Restricted Subsidiaries, which judgment or judgments are not paid, discharged or stayed for a period of 60 days after such judgment becomes a final judgment; provided that the aggregate amount of all such undischarged judgments exceeds $5.0 million;

(9) the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary pursuant to or within the meaning of Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a custodian of it or for all or substantially all of its property,

(D) makes a general assignment for the benefit of its creditors, or

(E) generally is not paying its debts as they become due;

(10) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary in an involuntary case;

(B) appoints a custodian of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary or for all or substantially all of the property of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary; or

(C) orders the liquidation of the Company or any of its Restricted Subsidiaries that is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary;

and the order or decree remains unstayed and in effect for 60 consecutive days;

(11) revocation, termination, suspension or other cessation of effectiveness of any Gaming License, which results in the cessation or suspension of gaming operations for a period of more than 90 consecutive days at any of the Properties (other than as a result of an Asset Sale) and such Property is the principal asset of a Significant Subsidiary or if such Property (considered separately) would constitute a Significant Subsidiary if it were the only asset in a Subsidiary; or

(12) (a) except as permitted by this Indenture, any Note Guarantee or any Collateral Document or any material security interest granted thereby shall be held in any judicial proceeding to be unenforceable or invalid, or shall cease for any reason to be in full force and effect and such default continues for 10 days after written notice to ACEP or (b) ACEP or any Guarantor, or any Person acting on behalf of ACEP or any Guarantor, shall deny or disaffirm its obligations under any Note Guarantee or Collateral Document, in each of clauses (a) and (b), which would materially and adversely impair the benefits to the Trustee or the holders of the Notes thereunder.

Section 6.02 Acceleration.

Subject to the provisions of the Intercreditor Agreement, in the case of an Event of Default specified in clauses (9) or (10) of Section 6.01 hereof, with respect to the Company or any Guarantor that

is a Significant Subsidiary or any group of Restricted Subsidiaries of the Company that, taken together, would constitute a Significant Subsidiary, all outstanding Notes will become due and payable immediately without further action or notice. Subject to the provisions of the Intercreditor Agreement, if any other Event of Default occurs and is continuing, the Trustee or the Holders of at least 25% in principal amount of the then outstanding Notes may declare the principal, premium, if any, interest, Liquidated Damages, if any, and any other monetary obligations on all the Notes to be due and payable immediately

The Holders of a majority in aggregate principal amount of the then outstanding Notes by written notice to the Trustee may, on behalf of all of the Holders, rescind an acceleration or waive any existing Default or Event of Default and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default (except nonpayment of principal, interest or premium or Liquidated Damages, if any, that has become due solely because of the acceleration) have been cured or waived.

If an Event of Default occurs on or after February 1, 2007 by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding payment of the premium that the Company would have had to pay if the Company then had elected to redeem the Notes pursuant to Section 3.07 hereof, then, upon acceleration of the Notes, an equivalent premium shall also become and be immediately due and payable, to the extent permitted by law, anything in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default occurs prior to February 1, 2007 by reason of any willful action (or inaction) taken (or not taken) by or on behalf of the Company with the intention of avoiding the prohibition on redemption of the Notes prior to such date, then, upon acceleration of the Notes, an additional premium shall also become and be immediately due and payable in an amount, for each of the years beginning on February 1 of the years set forth below, as set forth below (expressed as a percentage of the principal amount of the Notes on the date of payment that would otherwise be due but for the provisions of this sentence):

YEAR	PERCENTAGE
2004	7.850%
2005	6.869%
2006	5.888%

2007..... 4.906%

Section 6.03 Other Remedies.

If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal, premium and Liquidated Damages, if any, and interest on the Notes or to enforce the performance of any provision of the Notes or this Indenture.

The Trustee may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in the proceeding. A delay or omission by the Trustee or any Holder of a Note in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of or acquiescence in the Event of Default. All remedies are cumulative to the extent permitted by law.

Section 6.04 Waiver of Past Defaults.

Holders of not less than a majority in aggregate principal amount of the then outstanding Notes by notice to the Trustee may on behalf of the Holders of all of the Notes waive an existing Default or Event of Default and its consequences hereunder, except a continuing Default or Event of Default in the

payment of the principal of, premium and Liquidated Damages, if any, or interest on, the Notes (including in connection with an offer to purchase); provided, however, that the Holders of a majority in aggregate principal amount of the then outstanding Notes may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.05 Control by Majority.

Holders of a majority in principal amount of the then outstanding Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or exercising any trust or power conferred on it. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture that the Trustee determines may be unduly prejudicial to the rights of other Holders of Notes or that may involve the Trustee in personal liability.

Section 6.06 Limitation on Suits.

A Holder may pursue a remedy with respect to this Indenture or the Notes only if:

(1) the Holder of a Note gives to the Trustee written notice that an Event of Default is continuing;

(2) Holders of at least 25% in principal amount of the then outstanding Notes make a written request to the Trustee to pursue the remedy;

(3) such Holder or Holders offer and, if requested, provide to the Trustee security or indemnity reasonably satisfactory to the Trustee against any loss, liability or expense;

(4) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security or indemnity, if requested; and

(5) during such 60-day period the Holders of a majority in aggregate principal amount of the then outstanding Notes do not give the Trustee a direction inconsistent with the request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder of a Note or to obtain a preference or priority over another Holder of a Note.

Section 6.07 Rights of Holders of Notes to Receive Payment.

Notwithstanding any other provision of this Indenture, the right of any Holder of a Note to receive payment of principal, premium and Liquidated Damages, if any, and interest on the Note, on or after the respective due dates expressed in the Note (including in connection with an offer to purchase), or to bring suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such Holder; provided that a Holder shall not have the right to institute any such suit for the enforcement of payment if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the Lien of this Indenture upon any property subject to such Lien.

Section 6.08 Collection Suit by Trustee.

If an Event of Default specified in Section 6.01(1) or (2) occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Company for the whole amount of principal of, premium and Liquidated Damages, if any, and interest remaining unpaid on the Notes and interest on overdue principal and, to the extent lawful, interest and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

Section 6.09 Trustee May File Proofs of Claim.

The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and the Holders of the Notes allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes), its creditors or its property and shall be entitled and empowered to collect, receive and distribute any money or other property payable or deliverable on any such claims and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10 Priorities.

If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

First: to the Trustee, its agents and attorneys for amounts due under Section 7.07 hereof, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

Second: to Holders of Notes for amounts due and unpaid on the Notes for principal, premium and Liquidated Damages, if any, and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal, premium and Liquidated Damages, if any and interest, respectively; and

Third: to the Company, the Guarantors or to such party as a court of

competent jurisdiction shall direct.

The Trustee may fix a record date and payment date for any payment to Holders of Notes pursuant to this Section 6.10.

Section 6.11 Undertaking for Costs.

In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as a Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder of a Note pursuant to Section 6.07 hereof, or a suit by Holders of more than 10% in principal amount of the then outstanding Notes.

ARTICLE 7.
TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing of which a Responsible Officer of the Trustee has actual knowledge or of which written notice shall have been given to the Trustee in accordance with the terms of this Indenture, the Trustee will exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default of which a Responsible Officer of the Trustee has actual knowledge or of which written notice shall have been given to the Trustee in accordance with the terms of this Indenture:

(1) the duties of the Trustee will be determined solely by the express provisions of this Indenture and the Collateral Documents to which the Trustee is a party and the Trustee need perform only those duties that are specifically set forth in this Indenture and the Collateral Documents to which the Trustee is a party and no others, and no implied covenants or obligations shall be read into this Indenture or the Collateral Documents to which the Trustee is a party against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform on their face to the requirements of this Indenture but shall not verify the contents thereof.

(c) The Trustee may not be relieved from liabilities for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph does not, and shall not be construed to, limit the effect of paragraph (b) of this Section 7.01;

(2) the Trustee will not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts;

(3) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05 hereof; and

(4) the Trustee shall not be required to examine any of the reports, information or documents delivered to it under this Indenture to determine whether there has been any breach of the covenants of the Company contained herein, except that if any breach or default is expressly stated in any such reports, information or documents, the Trustee shall be deemed to have actual knowledge of such breach or default.

(d) Whether or not therein expressly so provided, every provision of this Indenture that in any way relates to the Trustee is subject to paragraphs (a), (b), and (c) of this Section 7.01.

(e) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Trustee need not investigate any fact or matter stated in any such document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel. The Trustee may consult with counsel of its choice and the written advice of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(c) The Trustee may act through its attorneys and agents and will not be responsible for the misconduct or negligence of any attorney or agent appointed with due care.

(d) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Indenture.

(e) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company or any Guarantor will be sufficient if signed by an Officer of the Company or any Guarantor, as applicable.

(f) The Trustee will be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

Section 7.03 Individual Rights of Trustee.

The Trustee in its individual or any other capacity may become the owner or pledgee of Notes and, subject to TIA Section 310(b), may otherwise deal with the Company or any Affiliate of the Company with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights and duties.

Section 7.04 Trustee's Disclaimer.

The Trustee will not be responsible for and makes no representation as to the validity or adequacy of this Indenture, the Notes or the Note Guarantees, it shall not be accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture, it will not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and it will not be responsible for any statement or recital herein or any statement in the Notes or any other document in connection with the sale of the Notes or pursuant to this Indenture other than its certificate of authentication.

Section 7.05 Notice of Defaults.

If a Default or Event of Default occurs and is continuing of which a Responsible Officer of the Trustee has actual knowledge, the Trustee will mail to Holders of Notes a notice of the Default or Event of Default within 90 days after such Responsible Officer has actual knowledge of such Default or Event of Default. Except in the case of a Default or Event of Default in payment of principal of, premium or Liquidated Damages, if any, or interest on, any Note, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Notes.

Notwithstanding anything to the contrary contained herein, the Trustee shall not be deemed to have knowledge of any Default or Event of Default until the Trustee shall have received notice thereof in accordance with Section 4.04 hereof, except in the case of an Event of Default with respect to the payment of principal or interest if the Trustee is the Paying Agent.

Section 7.06 Reports by Trustee to Holders of the Notes.

(a) Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, and for so long as Notes remain outstanding, the Trustee will mail to the Holders of the Notes a brief report dated as of such reporting date that complies with TIA Section 313(a) (but if no event described in TIA Section 313(a) has occurred within the twelve months preceding the reporting date, no report need be transmitted). The Trustee also will comply with TIA Section 313(b)(2). The Trustee will also transmit by mail all reports as required by TIA Section 313(c).

(b) A copy of each report at the time of its mailing to the Holders of Notes will be mailed by the Trustee to the Company and filed by the Trustee with the SEC and each stock exchange on which the Notes are listed in accordance with TIA Section 313(d). The Company will promptly notify the Trustee when the Notes are listed on any stock exchange.

Section 7.07 Compensation and Indemnity.

(a) The Company and the Guarantors will pay to the Trustee from time to time reasonable compensation for its acceptance of this Indenture and services hereunder. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Company will reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services. Such expenses will include the reasonable compensation, disbursements, costs and expenses of the Trustee's agents, consultants and counsel (including the costs and expenses of collection on the Notes and the enforcement and administration of any right or remedy or observing any of its duties under this Indenture).

(b) The Company and the Guarantors will indemnify the Trustee and hold the Trustee harmless against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses of enforcing this Indenture against the Company and the Guarantors (including this Section 7.07) and defending itself against any claim (whether asserted by the Company, the Guarantors, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability or expense is attributable to its negligence or bad faith. The Trustee will notify the Company and the Guarantors promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company and the Guarantors will not relieve the Company or any of the Guarantors of their obligations hereunder. The Company or such Guarantors will defend the claim and the Trustee will cooperate in the defense. The Trustee may have separate counsel and the Company will pay the reasonable fees and expenses of such counsel. Neither the Company nor any Guarantor need pay for any settlement made without its consent, which consent will not be unreasonably withheld.

(c) The obligations of the Company and the Guarantors under this Section 7.07 shall constitute additional Indebtedness hereunder and will survive the

satisfaction and discharge of this Indenture.

(d) To secure the Company's and the Guarantors' payment obligations in this Section 7.07, the Trustee will have a Lien prior to the Notes on all money or property held or collected by the Trustee, except that held in trust to pay principal and interest on particular Notes. Such Lien will survive the satisfaction and discharge of this Indenture.

(e) When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(9) or (10) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

(f) The Trustee will comply with the provisions of TIA Section 313(b)(2) to the extent applicable.

Section 7.08 Replacement of Trustee.

(a) A resignation or removal of the Trustee and appointment of a successor Trustee will become effective only upon the successor Trustee's acceptance of appointment as provided in this Section 7.08.

(b) The Trustee may resign in writing at any time and be discharged from the trust hereby created by so notifying the Company. The Holders of a majority in principal amount of the then outstanding Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

(1) the Trustee fails to comply with Section 7.10 hereof;

(2) the Trustee is adjudged a bankrupt or an insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(3) a custodian or public officer takes charge of the Trustee or its property; or

(4) the Trustee becomes incapable of acting.

(c) If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in principal amount of the then outstanding Notes may appoint a successor Trustee to replace the successor Trustee appointed by the Company.

(d) If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company, or the Holders of at least 10% in principal amount of the then outstanding Notes may petition any court of competent jurisdiction, at the expense of the Company, for the appointment of a successor Trustee.

(e) If the Trustee, after written request by any Holder who has been a Holder for at least six months, fails to comply with Section 7.10 hereof, such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(f) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Thereupon, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will mail a notice of its succession to Holders. The retiring Trustee will promptly transfer all property held by it as Trustee to the successor Trustee, provided all sums owing to the Trustee hereunder have been paid and subject to the Lien provided for in Section 7.07 hereof. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 hereof will continue for the benefit of the retiring Trustee.

Section 7.09 Successor Trustee by Merger, etc.

If the Trustee consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act will be the successor Trustee.

Section 7.10 Eligibility; Disqualification.

There will at all times be a Trustee hereunder that is a corporation organized and doing business under the laws of the United States of America or of any state thereof that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least $100.0 million as set forth in its most recent published annual report of condition.

This Indenture will always have a Trustee who satisfies the requirements of TIA Section 310(a)(1), (2) and (5). The Trustee is subject to TIA Section 310(b).

Section 7.11 Preferential Collection of Claims Against Company.

The Trustee is subject to TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

ARTICLE 8.
LEGAL DEFEASANCE AND COVENANT DEFEASANCE

Section 8.01 Option to Effect Legal Defeasance or Covenant Defeasance.

The Company may, at the option of its Board of Directors evidenced by a resolution set forth in an Officers' Certificate, and at any time, elect to have either Section 8.02 or 8.03 hereof be applied to all outstanding Notes upon compliance with the conditions set forth below in this Article 8.

Section 8.02 Legal Defeasance and Discharge.

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.02, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be deemed to have been discharged from their obligations with respect to all outstanding Notes (including the Note Guarantees) on the date the conditions set forth below are satisfied (hereinafter, "Legal Defeasance"). For this purpose, Legal Defeasance means that the Company and the Guarantors will be deemed to have paid and discharged the entire Indebtedness represented by the outstanding Notes (including the Note Guarantees), which will thereafter be deemed to be "outstanding" only for the purposes of Section 8.05 hereof and the other Sections of this Indenture referred to in clauses (1) and (2) below, and to have satisfied all their other obligations under such Notes, the Note Guarantees and this Indenture (and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging the same), except for the following provisions which will survive until otherwise terminated or discharged hereunder:

(1) the rights of Holders of outstanding Notes to receive payments in respect of the principal of, or interest or premium and Liquidated Damages, if any, on such Notes when such payments are due from the trust referred to in Section 8.04 hereof;

(2) the Company's obligations with respect to such Notes under Article 2 and Section 4.02 hereof;

(3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and the Company's and the Guarantors' obligations in connection therewith; and

(4) this Article 8.

Subject to compliance with this Article 8, the Company may exercise its option under this Section 8.02 notwithstanding the prior exercise of its option under Section 8.03 hereof.

Section 8.03 Covenant Defeasance.

Upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03, the Company and each of the Guarantors will, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, be released from each of their obligations under the covenants contained in Sections 4.07, 4.08, 4.09, 4.10, 4.11, 4.12, 4.13, 4.15, 4.16, 4.17, 4.18, 4.19, 4.20, 4.21, 4.22 and 4.23 hereof and clause (4) of Section 5.01 hereof with respect to the outstanding Notes on and after the date the conditions set forth in Section 8.04 hereof are satisfied (hereinafter, "Covenant Defeasance"), and the Notes will thereafter be deemed not "outstanding" for the purposes of any direction, waiver, consent or declaration or act of Holders (and the consequences of any thereof) in connection with such covenants, but will continue to be deemed "outstanding" for all other purposes hereunder (it being understood that such Notes will not be deemed outstanding for accounting purposes). For this purpose, Covenant

Defeasance means that, with respect to the outstanding Notes and Note Guarantees, the Company and the Guarantors may omit to comply with and will have no liability in respect of any term, condition or limitation set forth in any such covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such covenant or by reason of any reference in any such covenant to any other provision herein or in any other document and such omission to comply will not constitute a Default or an Event of Default under Section 6.01 hereof, but, except as specified above, the remainder of this Indenture and such Notes and Note Guarantees will be unaffected thereby. In addition, upon the Company's exercise under Section 8.01 hereof of the option applicable to this Section 8.03 hereof, subject to the satisfaction of the conditions set forth in Section 8.04 hereof, Sections 6.01(3) through 6.01(6), Section 6.01(11) and 6.01(12) hereof will not constitute Events of Default.

Section 8.04 Conditions to Legal or Covenant Defeasance.

In order to exercise either Legal Defeasance or Covenant Defeasance under either Section 8.02 or 8.03 hereof:

(1) the Company must irrevocably deposit with the Trustee, in trust, for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, in the opinion of a nationally recognized investment bank, appraisal firm, or firm of independent public accountants, to pay the principal of, premium and Liquidated Damages, if any, and interest on the outstanding Notes on the stated date for payment thereof or on the applicable redemption date, as the case may be, and the Company must specify whether the Notes are being defeased to such stated date for payment or to a particular redemption date;

(2) in the case of an election under Section 8.02 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that:

(A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling; or

(B) since the date of this Indenture, there has been a change in the applicable federal income tax law,

in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Legal Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Legal Defeasance had not occurred;

(3) in the case of an election under Section 8.03 hereof, the Company must deliver to the Trustee an Opinion of Counsel confirming that the Holders of the outstanding Notes will not recognize income, gain or loss for federal income tax purposes as a result of such Covenant Defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such Covenant Defeasance had not occurred;

(4) no Default or Event of Default shall have occurred and be continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute

a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(5) such Legal Defeasance or Covenant Defeasance will not result in a breach or violation of, or constitute a default under, any material agreement or instrument (other than this Indenture) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound;

(6) the Company must deliver to the Trustee an Opinion of Counsel, containing customary assumptions and exceptions, to the effect that upon and immediately following the deposit, the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally under any applicable law;

(7) the Company must deliver to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of Notes over the other creditors of the Company with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company or others; and

(8) the Company must deliver to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for or relating to the Legal Defeasance or the Covenant Defeasance have been complied with.

Section 8.05 Deposited Money and Government Securities to be Held in Trust; Other Miscellaneous Provisions.

Subject to Section 8.06 hereof, all money and noncallable Government Securities (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 8.05, the "Trustee") pursuant to Section 8.04 hereof in respect of the outstanding Notes will be held in trust and applied by the Trustee, in accordance with the provisions of such Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as Paying Agent) as the Trustee may determine, to the Holders of such Notes of all sums due and to become due thereon in respect of principal, premium and Liquidated Damages ,if any, and interest, but such money need not be segregated from other funds except to the extent required by law.

The Company will pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the cash or non-callable Government Securities deposited pursuant to Section 8.04 hereof or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of the outstanding Notes.

Notwithstanding anything in this Article 8 to the contrary, the Trustee will deliver or pay to the Company from time to time upon the request of the Company any money or non-callable Government Securities held by it as provided in Section 8.04 hereof which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee (which may be the opinion delivered under Section 8.04(1) hereof), are in excess of the amount thereof that would then be required to be deposited to effect an equivalent Legal Defeasance or Covenant Defeasance.

Section 8.06 Repayment to Company.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, premium or Liquidated Damages, if any, or interest on any Note

and remaining unclaimed for two years after such principal, premium or Liquidated Damages, if any, or interest has become due and payable shall be paid to the Company on its request or (if then held by the Company) will be discharged from such trust; and the Holder of such Note will thereafter be permitted to look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, will thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in the New York Times and The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which will not be less than 30 days from the date of such notification or publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 8.07 Reinstatement.

If the Trustee or Paying Agent is unable to apply any United States dollars or non-callable Government Securities in accordance with Section 8.02 or 8.03 hereof, as the case may be, by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the Company's and the Guarantors' obligations under this Indenture and the Notes and the Note Guarantees will be revived and reinstated as though no deposit had occurred pursuant to Section 8.02 or 8.03 hereof until such time as the Trustee or Paying Agent is permitted to apply all such money in accordance with Section 8.02 or 8.03 hereof, as the case may be; provided, however, that, if the Company makes any payment of principal of, premium or Liquidated Damages, if any, or interest on any Note following the reinstatement of its obligations, the Company will be subrogated to the rights of the Holders of such Notes to receive such payment from the money held by the Trustee or Paying Agent.

ARTICLE 9.
AMENDMENT, SUPPLEMENT AND WAIVER

Section 9.01 Without Consent of Holders of Notes.

Notwithstanding Section 9.02 of this Indenture, the Company, the Guarantors and the Trustee may amend or supplement this Indenture, the Note Guarantees or the Notes without the consent of any Holder of a Note:

(1) to cure any ambiguity, defect or inconsistency;

(2) to provide for uncertificated Notes in addition to or in place of certificated Notes or to alter the provisions of Article 2 hereof (including the related definitions) in a manner that does not materially adversely affect any Holder;

(3) to provide for the assumption of the Company's or a Guarantor's obligations to the Holders of the Notes by a successor to the Company pursuant to Article 5 or Article 12 hereof;

(4) to make any change that would provide any additional rights or benefits to the Holders of the Notes or that does not adversely affect the legal rights hereunder of any Holder of the Note;

(5) to comply with requirements of the SEC in order to effect or maintain the qualification of this Indenture under the TIA;

(6) to conform the text of this Indenture, the Collateral Documents, the Note Guarantees or the Notes to any provision of the "Description of Notes" section of the Offering Memorandum, to the extent that such provision in that "Description of Notes" was intended to be a verbatim recitation of a provision of this Indenture, the Collateral Documents, the Notes or the Note Guarantees;

(7) to provide for the issuance of Additional Notes in accordance with the limitations set forth in this Indenture as of the date hereof; or

(8) to allow any Guarantor to execute a supplemental indenture

and/or a Note Guarantee with respect to the Notes.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Guarantors in the execution of any amended or supplemental indenture authorized or permitted by the terms of this Indenture and to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee will not be obligated to enter into such amended or supplemental indenture that affects its own rights, duties or immunities under this Indenture or otherwise.

Section 9.02 With Consent of Holders of Notes.

Except as provided below in this Section 9.02, the Company and the Trustee may amend or supplement this Indenture (including, without limitation, Section 3.11, 4.10 and 4.15 hereof), the Note Guarantees and the Notes with the consent of the Holders of at least a majority in principal amount of the Notes (including, without limitation, Additional Notes, if any) then outstanding voting as a single class (including, without limitation, consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes), and, subject to Sections 6.04 and 6.07 hereof, any existing Default or Event of Default (other than a Default or Event of Default in the payment of the principal of, premium or Liquidated Damages, if any, or interest on the Notes, except a payment default resulting from an acceleration that has been rescinded) or compliance with any provision of this Indenture, the Note Guarantees or the Notes may be waived with the consent of the Holders of a majority in principal amount of the then outstanding Notes voting as a single class (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, the Notes).

Notwithstanding the foregoing, without the consent of at least 75% in principal amount of the Notes (including Additional Notes, if any) then outstanding (including consents obtained in connection with a tender offer or exchange offer for, or purchase of, such Notes), no waiver or amendment to this Indenture may:

(1) release all or substantially all of the Note Collateral from the Lien of this Indenture or the Collateral Documents (other than in accordance with this Indenture and the Collateral Documents); or

(2) release any Guarantor from any of its obligations under its Note Guarantee of this Indenture (other than in accordance with this Indenture).

Subject to Sections 6.04 and 6.07 hereof, the Holders of a majority in aggregate principal amount of the Notes then outstanding voting as a single class may waive compliance in a particular instance by the Company with any provision of this Indenture, the Notes, or the Note Guarantees. However, without

the consent of each Holder affected, an amendment, supplement or waiver under this Section 9.02 may not (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

(2) reduce the principal of or change the fixed maturity of any Note or alter or waive any of the provisions with respect to the redemption of the Notes except as provided above with respect to Sections 3.11, 4.10 and 4.15 hereof;

(3) reduce the rate of or change the time for payment of interest, including default interest, on any Note;

(4) waive a Default or Event of Default in the payment of principal of or premium or Liquidated Damages, if any, or interest on the Notes (except a rescission of acceleration of the Notes by the Holders of at least a majority in aggregate principal amount of the then outstanding Notes and a waiver of the payment default that resulted from such acceleration);

(5) make any Note payable in money other than that stated in the Notes;

(6) make any change in the provisions of this Indenture relating to waivers of past Defaults or the rights of Holders of Notes to receive payments of principal of, or interest or premium or Liquidated Damages, if any, on the Notes;

(7) waive a redemption payment with respect to any Note (other than a payment required by Sections 3.11, 4.10 or 4.15 hereof); or

(8) make any change in this Article 9 relating to the amendment and waiver provisions.

Upon the request of the Company accompanied by a resolution of its Board of Directors authorizing the execution of any such amended or supplemental indenture, and upon the filing with the Trustee of evidence satisfactory to the Trustee of the consent of the Holders of Notes as aforesaid, and upon receipt by the Trustee of the documents described in Section 7.02 hereof, the Trustee will join with the Company and the Guarantors in the execution of such amended or supplemental indenture unless such amended or supplemental indenture directly affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but will not be obligated to, enter into such amended or supplemental Indenture.

Section 2.08 hereof shall determine which Notes are considered to be "outstanding" for purposes of this Section 9.02.

It is not be necessary for the consent of the Holders of Notes under this Section 9.02 to approve the particular form of any proposed amendment or waiver, but it is sufficient if such consent approves the substance thereof.

After an amendment, supplement or waiver under this Section 9.02 becomes effective, the Company will mail to the Holders of Notes affected thereby a notice briefly describing the amendment, supplement or waiver. Any failure of the Company to mail such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such amended or supplemental indenture or waiver.

Section 9.03 Compliance with Trust Indenture Act.

Every amendment or supplement to this Indenture or the Notes will be set forth in a amended or supplemental indenture that complies with the TIA as then in effect.

Section 9.04 Revocation and Effect of Consents.

Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of a Note is a continuing consent by the Holder of a Note and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note, even if notation of the consent is not made on any Note. However, any such Holder of a Note or subsequent Holder of a Note may revoke the consent as to its Note if the Trustee receives written notice of revocation before the date the waiver, supplement or amendment becomes effective. An amendment, supplement or waiver becomes effective in accordance with its terms and thereafter binds every Holder.

Section 9.05 Notation on or Exchange of Notes.

The Trustee may place an appropriate notation about an amendment, supplement or waiver on any Note thereafter authenticated. The Company in exchange for all Notes may issue and the Trustee shall, upon receipt of an Authentication Order, authenticate new Notes that reflect the amendment, supplement or waiver.

Failure to make the appropriate notation or issue a new Note will not affect the validity and effect of such amendment, supplement or waiver.

Section 9.06 Trustee to Sign Amendments, etc.

The Trustee will sign any amended or supplemental indenture authorized pursuant to this Article 9 if the amendment or supplement does not adversely affect the rights, duties, liabilities or immunities of the Trustee. The Company may not sign an amended or supplemental indenture until the Board of Directors approves it. In executing any amended or supplemental indenture, the Trustee will be entitled to receive and (subject to Section 7.01 hereof) will be fully protected in relying upon, in addition to the documents required by Section 12.04 hereof, an Officers' Certificate and an Opinion of Counsel stating that the execution of such amended or supplemental indenture is authorized or permitted by this Indenture.

ARTICLE 10.
NOTE COLLATERAL AND SECURITY

Section 10.01 Collateral Documents.

The due and punctual payment of the principal of and interest and Liquidated Damages, if any, on the Notes when and as the same shall be due and payable, whether on an interest payment date, at maturity, by acceleration, repurchase, redemption or otherwise, and interest on the overdue principal of and interest and Liquidated Damages (to the extent permitted by law), if any, on the Notes and the Note Guarantees and performance of all other obligations of the Company and the Guarantors to the Holders of Notes or the Trustee under this Indenture, the Notes and the Note Guarantees, according to the terms hereunder or thereunder, are secured as provided in the Collateral Documents which the Company and the Guarantors, as applicable, will enter into on the Acquisition Date. Each Holder of Notes, by its acceptance thereof, consents and agrees to the terms of the Collateral Documents (including, without limitation, the provisions providing for foreclosure and release of Note Collateral) as the same may be in

effect or may be amended from time to time in accordance with its terms and authorizes and directs the Trustee for the benefit of the Holders of the Notes and the Collateral Agent, as applicable, to enter into the Collateral Documents and to perform its respective obligations and exercise its respective rights thereunder in accordance therewith. The Company will deliver to the Trustee copies of all documents delivered to the Collateral Agent pursuant to the Collateral Documents, and will do or cause to be done all such acts and things as may be necessary or proper, or as may be required by the provisions of the Collateral Documents, to assure and confirm to the Trustee and the Collateral Agent the security interest in the Note Collateral contemplated hereby, by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes and Note Guarantees secured hereby, according to the intent and purposes herein expressed. The Company will take, and will cause its Subsidiaries to take, upon request of the Trustee or the Collateral Agent, any and all actions reasonably required to cause the Collateral Documents to create and maintain, as security for the Obligations of the Company hereunder, a valid and enforceable perfected second priority Lien in and on all the Note Collateral, in favor of the Trustee for the benefit of the Holders of Notes and the Collateral Agent, superior to and prior to the rights of all third Persons and subject to no other Liens other than First Lien Obligations and Permitted Liens.

Section 10.02 Recording and Opinions.

(a) At the Acquisition Date, the Company will furnish to the Trustee simultaneously with the release of the escrow funds pursuant to the Escrow Agreement, an Opinion of Counsel either:

(1) stating that, in the opinion of such counsel, all action has been taken with respect to the recording, registering and filing of this Indenture, financing statements or other instruments necessary to make effective the Lien intended to be created by the Collateral Documents, and reciting with respect to the security interests in the Note Collateral, the details of such action; or

(2) stating that, in the opinion of such counsel, no such action is necessary to make such Lien effective.

(b) The Company will furnish to the Collateral Agent and the Trustee on

February 1 in each year beginning with February 1, 2005, an Opinion of Counsel, dated as of such date, either:

(1) (A) stating that, in the opinion of such counsel, action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of all supplemental indentures, financing statements, continuation statements or other instruments of further assurance as is necessary to maintain the Lien of the Collateral Documents and reciting with respect to the security interests in the Note Collateral the details of such action or referring to prior Opinions of Counsel in which such details are given, and (B) stating that, in the opinion of such counsel, based on relevant laws as in effect on the date of such Opinion of Counsel, all financing statements and continuation statements have been executed and filed that are necessary as of such date and during the succeeding 12 months fully to preserve and protect, to the extent such protection and preservation are possible by filing, the rights of the Holders of Notes and the Collateral Agent and the Trustee hereunder and under the Collateral Documents with respect to the security interests in the Note Collateral;

(2) stating that, in the opinion of such counsel, no such action is necessary to maintain such Lien and assignment.

(c) The Company will otherwise comply with the provisions of TIA Section 314(b).

Section 10.03 Release of Note Collateral.

(a) Subject to the provisions of this Section 10.03, Note Collateral may be released from the Lien and security interest created by the Collateral Documents at any time or from time to time in accordance with the provisions of the Collateral Documents or as provided hereby.

(b) Upon the request of the Company pursuant to an Officers' Certificate certifying that all conditions precedent hereunder have been met and stating whether or not such release is in connection with an Asset Sale and specifying (1) the identity of the Note Collateral to be released and (2) the provision of this Indenture which authorizes such release, the Collateral Agent, at the sole cost and expense of the Company, shall release:

(1) all Note Collateral that is contributed, sold, leased, conveyed, transferred or otherwise disposed of in compliance with the provisions of this Indenture to any Person (other than the Company or any Restricted Subsidiary (including any Note Collateral that is contributed, sold, leased, conveyed, transferred or otherwise disposed of to an Unrestricted Subsidiary)); provided, that if such contribution, sale, lease, conveyance, transfer or other disposition constitutes an Asset Sale, the Company will apply the Net Proceeds in accordance with Section 4.10 hereof and that no Default or Event of Default has occurred and is continuing or would occur immediately following such release. Upon receipt of such Officers' Certificate the Collateral Agent shall execute, deliver or acknowledge any necessary or proper instruments of termination, satisfaction or release to evidence the release of any Note Collateral permitted to be released pursuant to this Indenture or the Collateral Documents.

(2) Note Collateral that is condemned, seized or taken by the power of eminent domain or otherwise confiscated pursuant to an Event of Loss; provided that the Net Loss Proceeds, if any, from such Event of Loss are applied in accordance with Section 4.16 hereof;

(3) all Note Collateral which may be released with the consent of Holders pursuant to Section 9.02 hereof;

(4) all Note Collateral (except as provided in Article 8 and Article 12 hereof) upon discharge or defeasance in accordance with Article 8 and Article 12 hereof;

(5) all Note Collateral upon the payment in full of all Obligations of the Company with respect to the Notes and the Guarantors with respect to the Note Guarantees;

(6) Note Collateral of a Guarantor whose Note Guarantee is released in accordance with Section 11.05 hereof;

(7) assets included in the Note Collateral with a Fair Market Value of up to $1.0 million in any calendar year, subject to cumulative carryover for any amount not used in any prior calendar year; and

(8) all Note Collateral that constituted furnishings, fixtures or equipment that is financed with the proceeds of Indebtedness to any Person (including to the Company or an Affiliate of the Company in accordance with Section 4.11 hereof) financed or permitted to be incurred pursuant to Section 4.09(b)(3) hereof.

(c) Upon receipt of such Officers' Certificate the Collateral Agent shall execute, deliver or acknowledge any necessary or proper instruments of termination, satisfaction or release to evidence the

release of any Note Collateral permitted to be released pursuant to this Indenture or the Collateral Documents.

(d) No Note Collateral may be released from the Lien and security interest created by the Collateral Documents pursuant to the provisions of the Collateral Documents unless the certificate required by this Section 10.03 has been delivered to the Collateral Agent.

(e) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Notes has been accelerated (whether by declaration or otherwise) and the Trustee has delivered a notice of acceleration to the Collateral Agent, no release of Note Collateral pursuant to the provisions of the Collateral Documents will be effective as against the Holders of Notes.

(f) The release of any Note Collateral from the terms of this Indenture and the Collateral Documents will not be deemed to impair the security under this Indenture in contravention of the provisions hereof if and to the extent the Note Collateral is released pursuant to the terms of the Collateral Documents and this Indenture. To the extent applicable, the Company will cause TIA Section 313(b), relating to reports, and TIA Section 314(d), relating to the release of property or securities from the Lien and security interest of the Collateral Documents and relating to the substitution therefor of any property or securities to be subjected to the Lien and security interest of the Collateral Documents, to be complied with. Any certificate or opinion required by TIA Section 314(d) may be made by an Officer of the Company except in cases where TIA Section 314(d) requires that such certificate or opinion be made by an independent Person, which Person will be an independent engineer, appraiser or other expert selected or approved by the Trustee and the Collateral Agent in the exercise of reasonable care.

(g) The Trustee shall release at the sole cost and expense of the Company and the Guarantors the Lien securing any Note Collateral that also secures First Lien Obligations to the extent the Holders of the First Lien Obligations release their Liens on such Note Collateral; provided that, after giving effect to such release, the aggregate book value of all of the Note Collateral released does not exceed 10% of the Company's and the Guarantors' total combined assets as of the date hereof.

Section 10.04 Certificates of the Company.

The Company will furnish to the Trustee and the Collateral Agent, prior to each proposed release of Note Collateral pursuant to the Collateral Documents:

(1) all documents required by TIA Section 314(d); and

(2) an Opinion of Counsel, which may be rendered by internal counsel to the Company, to the effect that such accompanying documents constitute all documents required by TIA Section 314(d).

The Trustee may, to the extent permitted by Sections 7.01 and 7.02 hereof, accept as conclusive evidence of compliance with the foregoing provisions the appropriate statements contained in such documents and such Opinion of Counsel.

Section 10.05 Certificates of the Trustee.

In the event that the Company wishes to release Note Collateral in accordance with the Collateral Documents and has delivered the certificates and documents required by the Collateral Documents and Sections 10.03 and 10.04 hereof, the Trustee will determine whether it has received all documentation required by TIA Section 314(d) in connection with such release and, based on such determination and the

Opinion of Counsel delivered pursuant to Section 10.04(2), will deliver a certificate to the Collateral Agent setting forth such determination.

Section 10.06 Authorization of Actions to Be Taken by the Trustee Under the Collateral Documents.

Subject to the provisions of Section 7.01 and 7.02 hereof, the Trustee may, in its sole discretion and without the consent of the Holders of Notes, direct, on behalf of the Holders of Notes, the Collateral Agent to, take all actions it deems necessary or appropriate in order to:

(1) enforce any of the terms of the Collateral Documents; and

(2) collect and receive any and all amounts payable in respect of the Obligations of the Company hereunder.

The Trustee will have power to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Note Collateral by any acts that may be unlawful or in violation of the Collateral Documents or this Indenture, and such suits and proceedings as the Trustee may deem expedient to preserve or protect its interests and the interests of the Holders of Notes in the Note Collateral (including power to institute and maintain suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would impair the security interest hereunder or be prejudicial to the interests of the Holders of Notes or of the Trustee).

Section 10.07 Authorization of Receipt of Funds by the Trustee Under the Collateral Documents.

The Trustee is authorized to receive any funds for the benefit of the Holders of Notes distributed under the Collateral Documents, and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture.

Section 10.08 Termination of Security Interest.

Upon the payment in full of all Obligations of the Company under this Indenture and the Notes, upon Legal Defeasance or upon the consent of at least 75% in principal amount of the Notes then outstanding as provided in Section 9.02 hereof, the Trustee will, at the request of the Company, deliver a certificate to the Collateral Agent stating that such Obligations have been paid in full, and instruct the Collateral Agent to release the Liens pursuant to this Indenture and the Collateral Documents.

Section 10.09 After Acquired Property.

(a) Upon the acquisition by the Company or any Guarantor of any assets or property that either (1) secures First Lien Obligations or (2) has a Fair Market Value in excess of $2.0 million individually or $10.0 million in a series of one or more related transactions, subject to the approval by Gaming Authorities or to the extent not prohibited by Gaming Law, the Company and such Guarantor shall:

(1) in the case of personal property, execute and deliver to the Trustee for the benefit of the Holders such Uniform Commercial Code financing statements or take such other actions as shall be necessary or (in the opinion of the Trustee) desirable to perfect and protect the Trustee's security interest in such assets or property for the benefit of the Holders of Notes;

(2) in the case of real property, execute and deliver to the Trustee:

(a) a deed of trust or a leasehold deed of trust, as appropriate, substantially in the form of the Deeds of Trust (with such modifications as necessary to comply with applicable law) that secure the Notes and the Note Guarantees; and

(b) title and extended coverage insurance covering such real property in an amount at least equal to the purchase price of such real property; and

(3) promptly deliver to the Trustee such Opinion of Counsel, if any, as the Trustee may reasonably require with respect to the foregoing (including opinions as to enforceability and perfection of security interests;

provided, however, that (1) the Company and the Guarantors shall not be required to provide a security interest in any assets or property that are permitted to secure certain other Obligations as provided for in this Indenture, and (2) no more than 65% of the Capital Stock of any Foreign Subsidiary shall be required to be pledged as Note Collateral.

(b) If the granting of any security interest referred to in Section 10.09(a) requires the consent of a third party, the Company shall use all commercially reasonable efforts to obtain such consent.

(c) Any future Foreign Subsidiary of the Company that is a direct borrower with respect to any Indebtedness referred to in Section 4.09(b)(1) may, to the extent otherwise permitted by this Indenture, grant a security interest in its property to the lenders therein with respect to such Indebtedness, or to an agent or trustee on behalf of such lenders, to secure Obligations with respect to such Indebtedness, without being required to provide a second-priority security interest upon such property as security for the Notes; provided, however, that no such security interest shall secure any Indebtedness of the Company, any Restricted Subsidiary or any Guarantor.

ARTICLE 11.
NOTE GUARANTEES

Section 11.01 Guarantee.

(a) Subject to this Article 11, each of the Guarantors hereby, jointly and severally, unconditionally guarantees to each Holder of a Note authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(1) the principal of, premium and Liquidated Damages, if any, and interest on the Notes will be promptly paid in full when due, whether at maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise.

Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay the same immediately. Each Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(b) The Guarantors hereby agree that their obligations hereunder are

unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Notes with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Note Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture.

(c) If any Holder or the Trustee is required by any court or otherwise to return to the Company, the Guarantors or any custodian, trustee, liquidator or other similar official acting in relation to either the Company or the Guarantors, any amount paid by either to the Trustee or such Holder, this Note Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

(d) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Note Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Note Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Note Guarantee.

Section 11.02 Limitation on Guarantor Liability.

Each Guarantor, and by its acceptance of Notes, each Holder, hereby confirms that it is the intention of all such parties that the Note Guarantee of such Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Note Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under this Article 11, result in the obligations of such Guarantor under its Note Guarantee not constituting a fraudulent transfer or conveyance.

Section 11.03 Execution and Delivery of Note Guarantee.

To evidence its Note Guarantee set forth in Section 11.01 hereof, each Guarantor hereby agrees that a notation of such Note Guarantee substantially in the form attached as Exhibit E hereto will be

endorsed by an Officer of such Guarantor on each Note authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of such Guarantor by one of its Officers.

Each Guarantor hereby agrees that its Note Guarantee set forth in Section 11.01 hereof will remain in full force and effect notwithstanding any failure to endorse on each Note a notation of such Note Guarantee.

If an Officer whose signature is on this Indenture or on the Note Guarantee no longer holds that office at the time the Trustee authenticates the Note on which a Note Guarantee is endorsed, the Note Guarantee will be valid nevertheless.

The delivery of any Note by the Trustee, after the authentication thereof

hereunder, will constitute due delivery of the Note Guarantee set forth in this Indenture on behalf of the Guarantors.

In the event that the Company or any of its Restricted Subsidiaries creates or acquires any Restricted Subsidiary after the date of this Indenture and Investments in that Restricted Subsidiary exceed the amount described in clause (1) of the definition of "Permitted Investments", if required by Section 4.20 hereof, the Company will cause such Restricted Subsidiary to comply with the provisions of Section 4.20 hereof and this Article 11, to the extent applicable. For the avoidance of doubt, this Article 11 shall apply to each of the Acquired Subsidiaries, and the Company shall, and shall cause each such Acquired Subsidiary to, comply with Section 4.20 and this Article 11 on the Acquisition Date.

Section 11.04 Guarantors May Consolidate, etc., on Certain Terms.

Except as otherwise provided in Section 11.05 hereof, no Guarantor may sell or otherwise dispose of all or substantially all of its assets to, or consolidate with or merge with or into (whether or not such Guarantor is the surviving Person) another Person, whether or not affiliated with such Guarantor, unless:

(1) immediately after giving effect to such transaction, no Default or Event of Default exists; and

(2) either:

(a) subject to Section 11.05 hereof, the Person acquiring the property in any such sale or disposition or the Person formed by or surviving any such consolidation or merger unconditionally assumes all the obligations of that Guarantor, pursuant to a supplemental indenture in form and substance reasonably satisfactory to the Trustee, under this Indenture and the Note Guarantee on the terms set forth herein or therein; and

(b) the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of this Indenture, including without limitation, Section 4.10 hereof.

In case of any such consolidation, merger, sale or conveyance and, subject to Section 11.05 hereof, upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the Note Guarantee endorsed upon the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, such successor Person will succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such successor Person thereupon may cause to be signed any or all of the Note Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee. All the Note

Guarantees so issued will in all respects have the same legal rank and benefit under this Indenture as the Note Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Note Guarantees had been issued at the date of the execution hereof.

Except as set forth in Articles 4 and 5 hereof, and notwithstanding clauses (a) and (b) above, nothing contained in this Indenture or in any of the Notes will prevent any consolidation or merger of a Guarantor with or into the Company or another Guarantor, or will prevent any sale or conveyance of the property of a Guarantor as an entirety or substantially as an entirety to the Company or another Guarantor.

Section 11.05 Releases.

(a) In the event of any sale or other disposition of all or substantially all of the assets of any Guarantor, by way of merger, consolidation or otherwise, or a sale or other disposition of all of the Capital Stock of any Guarantor, in each case to a Person that is not (either before or after giving effect to such transactions) the Company or a Restricted Subsidiary of the Company, then such Guarantor (in the event of a sale or other

disposition, by way of merger, consolidation or otherwise, of all of the Capital Stock of such Guarantor) or the corporation acquiring the property (in the event of a sale or other disposition of all or substantially all of the assets of such Guarantor) will be released and relieved of any obligations under its Note Guarantee; provided that the Net Proceeds of such sale or other disposition are applied in accordance with the applicable provisions of this Indenture, including without limitation Section 4.10 hereof. Upon delivery by the Company to the Trustee of an Officers' Certificate and an Opinion of Counsel to the effect that such sale or other disposition was made by the Company in accordance with the provisions of this Indenture, including without limitation Section 4.10 hereof, the Trustee will execute any documents reasonably required in order to evidence the release of any Guarantor from its obligations under its Note Guarantee.

(b) Upon designation of any Guarantor as an Unrestricted Subsidiary in accordance with the terms of this Indenture, such Guarantor will be released and relieved of any obligations under its Note Guarantee.

(c) Upon Legal Defeasance in accordance with Article 8 hereof or satisfaction and discharge of this Indenture in accordance with Article 12 hereof, each Guarantor will be released and relieved of any obligations under its Note Guarantee.

(d) Upon the requisite consent of the Holders of the Notes, in accordance with Section 9.02 hereof, a Guarantor shall be released and relieved of any Obligations under its Note Guarantee.

Any Guarantor not released from its obligations under its Note Guarantee as provided in this Section 11.05 will remain liable for the full amount of principal of and interest on the Notes and for the other obligations of any Guarantor under this Indenture as provided in this Article 11.

ARTICLE 12.
SATISFACTION AND DISCHARGE

Section 12.01 Satisfaction and Discharge.

This Indenture will be discharged and will cease to be of further effect as to all Notes and Note Guarantees issued hereunder and all Liens securing the Notes and the Obligations including the Note Guarantees will be released, when:

(1) either:

(a) all Notes that have been authenticated, except lost, stolen or destroyed Notes that have been replaced or paid and Notes for whose payment money has theretofore been deposited in trust and thereafter repaid to the Company, have been delivered to the Trustee for cancellation; or

(b) all Notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year and the Company or any Guarantor has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the Holders, cash in U.S. dollars, non-callable Government Securities, or a combination thereof, in such amounts as will be sufficient, without consideration of any reinvestment of interest, to pay and discharge the entire Indebtedness on the Notes not delivered to the Trustee for cancellation for principal, premium Liquidated Damages, if any, and accrued interest to the date of maturity or redemption;

(2) no Default or Event of Default has occurred and is continuing on the date of such deposit (other than a Default or Event of Default resulting from the borrowing of funds to be applied to such deposit) and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Company or any Guarantor is a party or by which the Company or any Guarantor is bound;

(3) the Company or any Guarantor has paid or caused to be paid all sums payable by it under this Indenture; and

(4) the Company has delivered irrevocable instructions to the Trustee under this Indenture to apply the deposited money toward the payment of the Notes at maturity or the redemption date, as the case may be.

In addition, the Company must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Notwithstanding the satisfaction and discharge of this Indenture, if money has been deposited with the Trustee pursuant to subclause (b) of clause (1) of this Section, the provisions of Sections 12.02 and 8.06 will survive. In addition, nothing in this Section 12.01 will be deemed to discharge those provisions of Section 7.07 hereof, that, by their terms, survive the satisfaction and discharge of this Indenture.

Section 12.02 Application of Trust Money.

Subject to the provisions of Section 8.06 hereof, all money deposited with the Trustee pursuant to Section 12.01 hereof shall be held in trust and applied by it, in accordance with the provisions of the Notes and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and premium, if any, interest and Liquidated Damages, if any, for whose payment such money has been deposited with the Trustee; but such money need not be segregated from other funds except to the extent required by law.

If the Trustee or Paying Agent is unable to apply any money or Government Securities in accordance with Section 12.01 hereof by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's and any Guarantor's obligations under this Indenture and the Notes shall be

revived and reinstated as though no deposit had occurred pursuant to Section 12.01 hereof; provided that if the Company has made any payment of principal of, premium, if any, interest or Liquidated Damages, if any, on any Notes because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Notes to receive such payment from the money or Government Securities held by the Trustee or Paying Agent.

ARTICLE 13.
MISCELLANEOUS

Section 13.01 Trust Indenture Act Controls.

If any provision of this Indenture limits, qualifies or conflicts with the duties imposed by TIA Section 318(c), the imposed duties will control.

Section 13.02 Notices.

Any notice or communication by the Company, any Guarantor or the Trustee to the others is duly given if in writing and delivered in Person or mailed by first class mail (registered or certified, return receipt requested), telex, telecopier or overnight air courier guaranteeing next day delivery, to the others' address:

If to the Company and/or any Guarantor:

American Casino & Entertainment Properties LLC
American Casino & Entertainment Properties Finance Corp.
2000 Las Vegas Boulevard South
Las Vegas, Nevada 89104
Telecopier No.: (702) 383-5242
Attention: Denise Barton

With a copy to:
Piper Rudnick LLP
1251 Avenue of the Americas
New York, New York 10020

Telecopier No.: (212) 835-6001
Attention: Steven L. Wasserman, Esq.

If to the Trustee:
Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, Delaware 19890
Telecopier No.: (302) 636-4140
Attention: Michael G. Oller

The Company, any Guarantor or the Trustee, by notice to the others, may designate additional or different addresses for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being

deposited in the mail, postage prepaid, if mailed; when answered back, if telexed; when receipt acknowledged, if telecopied; and the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

Any notice or communication to a Holder will be mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery to its address shown on the register kept by the Registrar. Any notice or communication will also be so mailed to any Person described in TIA Section 313(c), to the extent required by the TIA. Failure to mail a notice or communication to a Holder or any defect in it will not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it.

If the Company mails a notice or communication to Holders, it will mail a copy to the Trustee and each Agent at the same time.

Section 13.03 Communication by Holders of Notes with Other Holders of Notes.

Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Notes. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

Section 13.04 Certificate and Opinion as to Conditions Precedent.

Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

(1) an Officers' Certificate in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.05 hereof) stating that, in the opinion of the signers, all conditions precedent and covenants, if any, provided for in this Indenture relating to the proposed action have been satisfied; and

(2) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee (which must include the statements set forth in Section 13.05 hereof) stating that, in the opinion of such counsel, all such conditions precedent and covenants have been satisfied.

Section 13.05 Statements Required in Certificate or Opinion.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) must comply with the provisions of TIA Section 314(e) and must include:

(1) a statement that the Person making such certificate or opinion has read such covenant or condition;

(2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;

(3) a statement that, in the opinion of such Person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(4) a statement as to whether or not, in the opinion of such Person, such condition or covenant has been satisfied.

Section 13.06 Rules by Trustee and Agents.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar or Paying Agent may make reasonable rules and set reasonable requirements for its functions.

Section 13.07 No Personal Liability of Directors, Officers, Employees and Stockholders.

No past, present or future director, officer, manager (or managing member), direct or indirect member, partner, employee, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or the Guarantors under the Notes, this Indenture, the Note Guarantees, the Collateral Documents or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 13.08 Governing Law.

THE INTERNAL LAW OF THE STATE OF NEW YORK WILL GOVERN AND BE USED TO CONSTRUE THIS INDENTURE, THE NOTES AND THE NOTE GUARANTEES WITHOUT GIVING EFFECT TO APPLICABLE PRINCIPLES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY.

Section 13.09 No Adverse Interpretation of Other Agreements.

This Indenture may not be used to interpret any other indenture, loan or debt agreement of the Company or its Subsidiaries or of any other Person. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 13.10 Successors.

All agreements of the Company in this Indenture and the Notes will bind its successors. All agreements of the Trustee in this Indenture will bind its successors. All agreements of each Guarantor in this Indenture will bind its successors, except as otherwise provided in Section 11.05.

Section 13.11 Severability.

In case any provision in this Indenture, the Note Guarantees or in the Notes is invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

Section 13.12 Counterpart Originals.

The parties may sign any number of copies of this Indenture. Each signed copy will be an original, but all of them together represent the same agreement.

Section 13.13 Table of Contents, Headings, etc.

The Table of Contents, Cross-Reference Table and Headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions hereof.

[Signatures on following page]

SIGNATURES

Dated as of January 29, 2004

American Casino & Entertainment
Properties LLC

By: _____
Name:
Title:

American Casino & Entertainment
Properties finance corp.

By: _____
Name:
Title:

WILMINGTON TRUST COMPANY

By: _____
Name:
Title:

EXHIBIT 4.7

EXECUTION COPY

ESCROW AND SECURITY AGREEMENT

THIS ESCROW AND SECURITY AGREEMENT (this "AGREEMENT"), dated as of January 29, 2004 (the "EFFECTIVE Date"), is by and among American Casino & Entertainment Properties LLC, a Delaware limited liability company ("ACEP"), American Casino & Entertainment Properties Finance Corp., a Delaware corporation (together with ACEP, the "ISSUERS"), American Real Estate Holdings Limited Partnership, a Delaware limited partnership ("PARENT"), Wilmington Trust Company, a Delaware banking company, as the Trustee under the Indenture (as defined below) (in such capacity, and together with its successors, substitutes or assignees, the "TRUSTEE"), and Fleet National Bank, a national banking association organized under the laws of the United States, in its capacities as escrow agent, "securities intermediary" as defined in Section 8-102 of the Code and "bank" as defined in Section 9-102 of the Code (in each such capacity, and together with its successors, substitutes or assignees in each such capacity, the "ESCROW AGENT"). Capitalized terms used herein and not otherwise defined have the meanings assigned to them in the Indenture, dated as of the date hereof (as amended, supplemented and otherwise modified from time to time, the "INDENTURE"), by and between the Issuers and the Trustee. In addition, all references herein to the "CODE" shall mean the Uniform Commercial Code as in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral (as defined below) is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "Code" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions, and any reference to any section of the Code herein shall be a reference to such section as it is modified and amended from time to time and to any successor section.

RECITALS:

WHEREAS, the Issuers, Parent, and Bear, Stearns & Co. Inc. ("BEAR STEARNS") have entered into a purchase agreement, dated as of January 15, 2004 (the "PURCHASE AGREEMENT"), pursuant to which the Issuers have agreed to issue and sell to Bear Stearns, upon the terms set forth therein $215,000,000 aggregate principal amount of the Issuers' 7.85% Senior Secured Notes due 2012 (as amended, supplemented and exchanged from time to time, the "Notes");

WHEREAS, the Issuers and the Trustee have entered into the Indenture pursuant to which the Issuers will issue $215,000,000 aggregate principal amount of the Notes;

WHEREAS, the Issuers have agreed to place in escrow the Initial Escrow Amount (as defined below), to be held pursuant to the terms of this Agreement;

WHEREAS, the Issuers have established an escrow account with the Escrow Agent in the State of New York, number 9429364983, in the name of the Issuers (the "ACCOUNT");

WHEREAS, the Issuers and the Trustee are entering into this Agreement with the Escrow Agent to grant a first priority security interest to the Trustee for the benefit of the holders of the Notes (the "SECURED Parties") in the Account and all funds and financial assets contained therein and any and all proceeds of the foregoing (collectively, the "COLLATERAL"), to provide for the

control of the Collateral, to perfect the security interest of the Trustee for the benefit of the Secured Parties in the Collateral, and to establish the conditions to releasing the Collateral, as more fully described in this Agreement;

WHEREAS, attached hereto as Exhibit B-1 is a true, correct and executed copy of that certain Contribution Agreement, dated as of January 5, 2004 (the "CONTRIBUTION AGREEMENT"), by and among Parent, American Entertainment Properties Corp., ACEP and Stratosphere Corporation ("STRATOSPHERE"); and

WHEREAS, attached hereto as Exhibit B-2 is a true, correct and executed copy of that certain Membership Interest Purchase Agreement, dated as of January 5, 2004 (the "MEMBERSHIP PURCHASE AGREEMENT"), by and among ACEP, Starfire Holding Corporation and Carl C. Icahn.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Initial Escrow Amount; Interest; Investment of Funds.

(a) Deposit of Initial Escrow Amount. On the date hereof, (i) Bear Stearns, on behalf of the Issuers, shall initiate a wire transfer to the Account in United States dollars of the net proceeds (the "NET PROCEEDS") from the sale of the Notes in the amount of US$209,356,250.00 and (ii) Parent shall initiate or cause to be initiated a wire transfer to the Account in United States dollars of an amount so as to be, together with the Net Proceeds and any interest accrued in the Account, sufficient to redeem, on the date that is thirty-two (32) days after the date hereof, the Notes for cash at the Special Redemption Price (as defined in the Indenture). As of the date hereof, the Issuers and the Trustee agree that such amount shall be equal to US$7,143,972.22 (the aggregate amounts referred to in clauses (i) and (ii) of the prior sentence shall be referred to herein as the "INITIAL ESCROW AMOUNT").

(b) Interest Payments. On the date that is thirty (30) days after the date hereof (the "INITIAL INTEREST PAYMENT DATE") and every thirty (30) days thereafter or if any such date is not a Business Day, the immediately following Business Day (such dates together with the Initial Interest Payment Date, each an "ESCROW INTEREST PAYMENT DATE"), if the Escrow Break Date (as defined in Section 10(a) hereof) will not occur by such Escrow Interest Payment Date, (i) Parent shall make or cause to be made by each Escrow Interest Payment Date an irrevocable deposit to the Account in United States dollars of an amount so as to be sufficient to redeem, on the date that is thirty two (32) days after such Escrow Interest Payment Date, the Notes for cash at the Special Redemption Price (which amount shall be, for any 30-day period, $1,406,458.33, and for any day $46,881.94), less any interest accrued in the Account since the immediately preceding Escrow Interest Payment Date (each an "INTEREST PAYMENT") and (ii) a duly authorized representative of each of the Issuers shall by such Escrow Interest Payment Date deliver to the Escrow Agent and the Trustee a certificate in the form attached hereto as Exhibit A-2 stating that (A) Parent has made the irrevocable deposit described by the preceding clause (i) and (B) if the amounts so deposited are invested in accordance with the Issuers' instructions, the terms and conditions of Section 1(d)(i) with respect to the investment of funds in the Account will upon deposit be met with respect to any funds deposited pursuant to clause (i). Trustee shall provide to Parent and the Issuers a written calculation of the amount of interest accrued in the Account

since the immediately preceding Escrow Interest Payment Date through and including the Escrow Interest Payment Date with respect to which such calculation is made, which amount shall be provided by the Escrow Agent to the Trustee, together with the amount of the Interest Payment to be deposited by Parent not less than two Business Days prior to each such Escrow Interest Payment Date, which calculation shall, absent manifest error, be binding on Parent and the Issuers.

(c) Additional Payments. From time to time if the Trustee determines that there are insufficient funds in the Account to pay the Special Redemption Price by the next Escrow Interest Payment Date, the Trustee shall notify the Issuers and the Escrow Agent, which notice shall set forth the amount by which funds are insufficient and, in reasonable detail, the calculation of such deficiency, and the Issuers shall within two Business Days after receipt of notice from the Trustee, deposit such additional amounts to the Account. The determination of the Trustee shall, absent manifest error, be binding on the Issuers, and the Escrow Agent may conclusively rely on any such calculations.

(d) Investment of Funds in Account. Funds deposited in the Account shall be invested and reinvested only upon the following terms and conditions:

(i) Acceptable Investments. Subject to clause (ii) below, all funds deposited or held in the Account at any time shall be invested in accordance with the written instructions of either of the Issuers from time to time to the Escrow Agent only in one or more of the following:

(A) any obligations issued or guaranteed by the United States government or any agency or instrumentality thereof, in each case, maturing no later than the next Escrow Interest Payment Date;

(B) investments in time deposit accounts, certificates of deposit and money market deposits maturing by the next Escrow Interest Payment Date provided such investments are entitled to United States federal deposit insurance for the full amount thereof or issued by a bank or trust company that is organized under the laws of the United States of America or any State thereof having capital, surplus and undivided profits aggregating in excess of $500.0 million;

(C) repurchase obligations with a term of not later than the next Escrow Interest Payment Date entered into with a nationally recognized broker-dealer, with respect to which the purchased securities are obligations issued or guaranteed by the United States government or any agency thereof, which repurchase obligations shall be entered into pursuant to written agreements; and

(D) money market mutual funds which invest exclusively in investments described in clauses (A), (B) and (C) above, except that for purposes of this clause (D), the underlying investments of any such funds may have maturities later than the next Escrow Interest Payment Date.

The written instructions of the Issuers (or either of them) to the Escrow Agent shall specify the particular investment to be made, shall state that such investment is authorized to be made hereby, shall contain the certification referred to in Section 1(d)(ii) and shall be executed by a duly authorized representative of the Issuers. Such instructions shall be in the form attached hereto as Exhibit A-5. The Escrow Agent shall promptly implement such instructions. The Escrow Agent shall not be obligated in any way whatsoever to make any independent inquiry with respect to the correctness or accuracy of the Issuers' instructions delivered pursuant to this Section 1(d)(i).

(ii) Security Interest in Investments. The Issuers shall give no instruction to the Escrow Agent regarding the investment of funds in the Account unless the Issuers have first certified to the Trustee that, prior to such investment being made, the Issuers have taken, or caused to be taken, all actions necessary or desirable to cause the Trustee to have a first priority perfected security interest in the applicable investment for the benefit of the Secured Parties. The Issuers shall forward or cause to be forwarded a copy of such certificate to the Escrow Agent. The Escrow Agent shall be entitled to act upon such instruction without being obligated to make any independent inquiry with respect to whether the Issuers have complied with the provisions set out herein or that the security has been perfected. In addition, notwithstanding the foregoing, the Escrow Agent shall only invest in assets that the Escrow Agent is capable of crediting to the Account and in which the Escrow Agent so credits to the Account unless with respect to any asset not so credited the Issuers provide the Trustee (with a copy to the Escrow Agent) an opinion of counsel in form and substance satisfactory to the Trustee that the Trustee will have a valid, perfected first priority security interest in such investment.

(iii) Principal and Interest. All principal and interest earned on funds invested pursuant to Section 1(d)(i) shall be deposited in the Account as additional Collateral for the benefit of the Trustee and the ratable benefit of the Secured Parties and shall be reinvested in accordance with Section l(d)(i) hereof.

2. Release of Amounts in Account. The Escrow Agent shall hold all amounts in the Account in escrow pursuant to this Agreement until authorized

hereunder to deliver any or all of such amounts to the Issuers in accordance with the instructions received pursuant to Section 10(a) or Section 10(c) hereof or to the Trustee in accordance with the instructions received pursuant to Section 10(b), Section 10(d) or otherwise in accordance with this Agreement.

3. Certain Additional Agreements. The Issuers and the Trustee shall, upon request by the Escrow Agent, execute and deliver to the Escrow Agent such additional written instructions and certificates hereunder as may be reasonably required by the Escrow Agent.

4. Representations, Warranties and Agreements.

(a) Each of the Issuers, Parent and the Escrow Agent represents and warrants that:

(i) this Agreement is the valid and legally binding obligation of it, enforceable in accordance with its terms;

(ii) the Account has been established in the name of the Issuers and the Issuers are the sole entitlement holders of the Account;

(iii) It shall not change the name or account number of the Account without the prior written consent of the Trustee;

(iv) the Account is an account as to which financial assets are or may be credited and is a securities account (within the meaning of Section 8-501 of the Code);

(v) the Account has no financial assets that are registered in the name of the Issuers, payable to its order, or specially endorsed to it that have not been endorsed to the Escrow Agent or in blank; and

(vi) except for the claims and interests of the Trustee for the benefit of the Secured Parties and the claims and interests of the Issuers in the Account, it does not know of any claim to or interest in the Account or in any financial asset (as defined in Section 8-102(a)(9) of the Code) contained therein.

(b) The Escrow Agent covenants and agrees that:

(i) the Escrow Agent shall, subject to the terms of this Agreement, treat the Issuers as entitled to exercise the rights that comprise any financial asset credited to the Account;

(ii) all property delivered to the Escrow Agent for deposit to the Account and, except as otherwise provided in Section 1(d)(ii) hereof, all investments pursuant to Section 1(d)(i) hereof, will be credited in the ordinary course of business to the Account and the Escrow Agent will treat all property (including, without limitation, any investment property, financial asset, security, instrument or cash) held by it in, or credited to, the Account as financial assets (within the meaning of Section 8-102(a)(9) of the Code);

(iii) all securities or other property underlying any financial assets credited to the Account shall be registered in the name of the Escrow Agent, indorsed to the Escrow Agent or indorsed in blank or credited to another securities account maintained in the name of the Escrow Agent; and

(iv) in no case will any financial asset credited to the Account be registered in the name of the Issuers, payable to the order of the Issuers or specially indorsed to the Issuers except to the extent the foregoing have been specially indorsed to the Escrow Agent or in blank.

(c) The Trustee represents and warrants that this Agreement is the valid and legally binding obligation of the Trustee, enforceable in accordance with its terms.

5. No Withdrawals by the Issuers. The Escrow Agent shall neither accept nor comply with any order from either of the Issuers withdrawing any funds from the Account nor deliver any such funds to the Issuers, except in accordance with written instructions from the Trustee described in Section 10(a) or Section 10(c) hereof.

6. Grant of Security Interest; Perfection and Priority of Security Interest.

(a) The Issuers hereby grant to the Trustee, for the benefit of the Secured Parties, to secure all obligations and indebtedness of the Issuers under the Notes, a first priority security interest in the Collateral. The Escrow Agent hereby consents to such security interest and hereby waives and releases all liens, encumbrances, claims and rights of set-off it may have against the Collateral and agrees that it will not assert any such lien, encumbrance, claim or right or the priority thereof against the Collateral.

(b) The Escrow Agent hereby agrees to comply with all entitlement orders and instructions of the Trustee relating to the Account or any property or assets credited thereto or other investments purchased with funds therein in each case without further consent of the Issuers, the Parent or any other person. The Trustee agrees not to give any such entitlement order or instruction unless otherwise permitted to do so hereunder or under the Indenture, however, the Escrow Agent shall comply with all entitlement orders and instructions of the Trustee and shall have no responsibility to determine whether the Trustee is permitted to issue such an order or instruction. The Escrow Agent will not agree with any third party that it will comply with entitlement orders or instructions concerning the Account or any such investment purchased with funds from the Account originated by any third party without the prior written consent of the Trustee. The Issuers represent and warrant that, except for the security interest granted to the Trustee for the benefit of the Secured Parties hereby and the terms of this Agreement, the Issuers own the Collateral free and clear of any and all liens, encumbrances and claims of others.

(c) The Issuers and the Trustee hereby irrevocably instruct the Escrow Agent to, and the Escrow Agent shall, (i) (A) maintain sole dominion and control over the Collateral, for the benefit of the Trustee for the benefit of the Secured Parties to the extent specifically required herein, (B) maintain, or cause its agent within the State of New York to maintain, possession of all certificated securities purchased hereunder, if any, that are physically possessed by the Escrow Agent in order for the Trustee for the benefit of the Secured Parties to enjoy a continuous perfected first priority security interest therein under the laws of the State of New York (the Issuers hereby agreeing that in the event any certificated securities are in the possession of the Issuers or a third party, the Issuers shall undertake to deliver immediately all such certificates to the Escrow Agent), (C) take all steps specified by the Issuers pursuant to

paragraph (a) above to cause the Trustee for the benefit of the Secured Parties to enjoy a continuous perfected first priority security interest under the Code and any applicable law of the State of New York in all Collateral consisting of securities entitlements including all U.S. government securities purchased hereunder that are not certificated, if any, and (D) maintain the Collateral free and clear of all liens, encumbrances and claims against the Escrow Agent of any nature now or hereafter existing; and (ii) promptly notify the Trustee and the Issuers if the Escrow Agent receives written notice that any person other than the Trustee has a lien, encumbrance or adverse claim upon any portion of the Collateral. Notwithstanding any other provisions contained in this Agreement, the Escrow Agent shall act solely as the Trustee's agent in connection with its duties under this Section 6, and to the extent necessary to perfect the security interest of the Trustee, it is understood and agreed that the Escrow Agent shall be the agent hereunder of the Trustee not the Issuers. The Escrow Agent shall not have any right to receive compensation from the Trustee and shall have no authority to obligate the Trustee or to subordinate, compromise or pledge its security interest hereunder. Accordingly, the Escrow Agent is hereby directed to cooperate with the Trustee in the exercise of its rights in the Collateral provided for herein.

The Issuers hereby appoint the Trustee as its attorney-in-fact with full power of substitution, upon an Event of Default as defined in the Indenture, to

do any act that the Issuers are obligated hereby to do, and the Trustee may exercise such rights as the Issuers might exercise with respect to the Collateral and take any action in the Issuers' names to protect the security interest granted to the Trustee for the benefit of the Secured Parties. Upon an Event of Default and for so long as such Event of Default continues, the Trustee may exercise its rights under the Indenture.

7. Statements, Confirmations and Notices of Adverse Claims. The Escrow Agent will send copies of all statements, confirmations and other correspondence concerning the Account simultaneously to the Issuers and the Trustee at the addresses set forth in Section 11(f) of this Agreement.

8. Escrow Agent.

(a) The Escrow Agent shall have no duties or responsibilities, including, without limitation, (i) a duty to review or interpret the Indenture or (ii) a duty to act upon written instructions from the Issuers or the Trustee, except those expressly set forth herein. Except for this Agreement and the limited role of Escrow Agent as set out herein, the Escrow Agent is not a party to, or bound by, any agreement that may be required under, evidenced by, or arise out of the Indenture.

(b) If the Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions from the Issuers or the Trustee with respect to the Account that, in its reasonable opinion, are in conflict with any of the provisions of this Agreement, it shall be entitled to refrain from taking any action until it shall be directed otherwise in writing by a joint written instruction of the Issuers and the Trustee or by order of a court of competent jurisdiction. The Escrow Agent shall be protected in acting upon any notice, request, waiver, consent, receipt or other document reasonably believed by the Escrow Agent to be signed by the proper party or

parties and shall not be liable with respect to any action taken or omitted to be taken by it in accordance with any instruction received by it hereunder.

(c) To the fullest extent permitted by applicable law, the Escrow Agent, in its capacity as such, shall not be liable for any error or judgment or for any act done or step taken or omitted by it in good faith or for any mistake of fact or law, or for anything that it may do or refrain from doing in connection herewith, except for its own fraud, willful misconduct or gross negligence, and the Escrow Agent shall have no duties to anyone except the Issuers and the Trustee and their respective successors and permitted assigns.

(d) The Escrow Agent may consult legal counsel in the event of any dispute or question as to the construction of this Agreement or the Escrow Agent's duties hereunder, and the Escrow Agent shall incur no liability and shall be fully protected with respect to any action taken or omitted in good faith in accordance with the advice of counsel.

(e) The Escrow Agent shall be fully protected in relying on the signature of the representatives of the Issuers and the representative of the Trustee executing this Agreement or any instruction, notice or direction delivered pursuant to the terms of this Agreement without inquiry whether such signatory is an authorized representative of the Issuers or the Trustee.

(f) In the event of any disagreement between the Issuers or the Trustee, and/or any other person, resulting in adverse claims and demands being made in connection with or for the Account, the Escrow Agent shall be entitled at its option to refuse to comply with any such claim or demand, so long as such disagreement shall continue, and in so doing the Escrow Agent shall not be or become liable for damages or interest to the Issuers, Parent or the Trustee for its failure or refusal to comply with such conflicting or adverse demands. The Escrow Agent shall be entitled to continue so to refrain and refuse so to act until all differences shall have been resolved by agreement and the Escrow Agent shall have been notified thereof in writing signed by the Issuers and the Trustee. In the event of such disagreement that continues for ninety days or more, the Escrow Agent in its discretion may, but shall be under no obligation to, file a suit in interpleader for the purpose of having the respective rights of the claimants adjudicated and may deposit with the court all documents and property held hereunder. The Issuers agree to pay all reasonable out-of-pocket costs and expenses incurred by the Escrow Agent in such action, including

reasonable attorneys' fees and disbursements.

(g) To the fullest extent permitted by applicable law, the Escrow Agent is hereby indemnified by the Issuers and Parent from all losses, costs and expenses of any nature incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, unless such losses, costs or expenses shall have been caused by the Escrow Agent's fraud, willful misconduct or gross negligence. Such indemnification shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement until extinguished by any applicable statute of limitations.

(h) The Escrow Agent does not have any interest in the Collateral, but is serving as escrow holder only and having only possession thereof. This paragraph shall survive notwithstanding any termination of this Agreement or the resignation of the Escrow Agent.

(i) The Escrow Agent (and any successor Escrow Agent) may at any time resign as such by giving written notice of its resignation to the parties hereto at least thirty days prior to the date specified for such resignation to take effect. The Escrow Agent may be removed at any time by act of the Trustee. Upon the effective date of such resignation or removal of the Escrow Agent, all funds in the Account shall be delivered by it to such successor Escrow Agent or as otherwise shall be instructed in writing by the Issuers and the Trustee, whereupon the Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. If at that time the Escrow Agent has not received such instruction, the Escrow Agent's sole responsibility after that time shall be to safekeep the Account and all funds contained therein until receipt of a designation of successor Escrow Agent, or a joint written instruction as to disposition of the Account and all funds contained therein by the Issuers and the Trustee or a final order of a court of competent jurisdiction mandating disposition of the Account and all funds contained therein. If the Escrow Agent is removed or resigns, the Trustee shall promptly appoint a successor Escrow Agent. Any fees and outstanding costs due to the Escrow Agent at the time of its resignation or removal shall be paid by the Issuers or Parent forthwith upon request. Except for the payment of all accrued but unpaid fees that might be owed to the Escrow Agent, the Escrow Agent is not entitled to any further compensation upon its resignation or removal.

(j) The Escrow Agent hereby accepts its appointment and agrees to act as Escrow Agent under the terms and conditions of this Agreement and acknowledges receipt of the Initial Escrow Amount. The Issuers and Parent agree to pay to the Escrow Agent as payment in full for its services hereunder US$5,000.00 on the date hereof. The Issuers and Parent further agree to reimburse the Escrow Agent for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Escrow Agent in connection with this Agreement or in the performance of its duties hereunder (including reasonable fees, out-of-pocket expenses and disbursements of its counsel) forthwith upon written request. The obligations of the Issuers under the preceding two sentences shall survive the resignation or removal of the Escrow Agent and the termination of this Agreement until extinguished by any applicable statute of limitations.

9. Trustee.

(a) The Trustee may conclusively rely upon any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in such document.

(b) The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on any certificate delivered to it in accordance with the terms of this Agreement.

(c) The Trustee will not be liable for any action it takes or omits to take in good faith that it believes to be authorized or within the rights or powers conferred upon it by this Agreement.

10. Disposition of Assets in the Account Upon Certain Events.

(a) Transfer of Escrow Funds Upon Delivery of Release Certificate. If, on or prior to August 31, 2004 (the "ESCROW BREAK DATE"), the Issuers notify the Trustee (with a copy to the Escrow Agent) that it will deliver to the Trustee a copy of the Release Certificate attached hereto as Exhibit A duly executed by an authorized representative of the Issuers (together with all attachments and schedules thereto, the "RELEASE CERTIFICATE") within two Business Days, and within such two Business Days and on or prior to the Escrow Break Date the Issuers deliver the Release Certificate to the Trustee, upon receipt of the Release Certificate, the Trustee shall deliver to the Escrow Agent the Authorization to Release attached hereto as Exhibit A-1 (the "AUTHORIZATION TO RELEASE") instructing the Escrow Agent to transfer, upon receipt of such Authorization to Release, and the Escrow Agent agrees to transfer upon receipt of such Authorization to Release, all of the funds in the Account to such account(s) as the Issuers designate in writing (the "ISSUERS ACCOUNT").

The Escrow Agent shall not be obligated to inquire whether the Release Certificate has been issued to the Trustee and if so, whether it complies with all the provisions as set out herein.

The delivery of the Release Certificate to the Trustee by the Issuers and the delivery of the Authorization to Release to the Escrow Agent by the Trustee shall be the only conditions precedent to the release of funds to the Issuers Account. The delivery of the Release Certificate shall constitute a representation and warranty by the Issuers to the Escrow Agent and the Trustee of the truth and accuracy of the statements made therein.

(b) Special Mandatory Redemption. If the Escrow Agent has not received (i) a duly executed Authorization to Release on or prior to the Escrow Break Date, (ii) a duly executed Escrow Payment Certificate in the form of Exhibit A-2 on or prior to the applicable Escrow Interest Payment Date (or the applicable Interest Payment has not been irrevocably deposited to the Account by such Escrow Interest Payment Date) or (iii) the requested funds have not been irrevocably deposited into the Account within two Business Days of receipt of any notice from the Trustee pursuant to Section 1(c), it shall and is hereby irrevocably authorized to wire transfer all funds in the Account to the Paying Agent by the next Business Day. If, at any time, the Escrow Agent has received a certificate in the form attached hereto as Exhibit A-3 executed by an officer of each of the Issuers (an "OFFICER'S CERTIFICATE") certifying that the Issuers have made a good faith determination that the Issuers will be unable to deliver the Release Certificate to the Trustee by the Escrow Break Date, the Escrow Agent shall, and is hereby irrevocably authorized to, wire transfer on the next Business Day following receipt of the Officer's Certificate all funds in the Account to the Paying Agent. Any wire transfer made to the Paying Agent pursuant to this Section 10(b) shall be made to:

Wilmington Trust Company
Wilmington, DE
ABA No. 031100092
Acct No. 64999-0
Acct Name: American Casino & Entertainment Properties LLC
Attn: Mike Oller

(c) Release of Remaining Funds in Account. Upon such date as all funds have been released from the Account in accordance with Section 10(b) hereof and all fees and expenses of the Escrow Agent pursuant to this Agreement have been paid, upon receipt of a request by the Issuers to the Trustee, the Trustee shall transfer, or instruct the Escrow Agent to transfer, by wire transfer of immediately available funds any funds in excess of the funds sufficient to redeem the Notes in accordance with Section 3.09 of the Indenture to an account designated by the Issuers in writing.

(d) Release Upon an Interest Payment Date. In addition to disbursing amounts held in escrow pursuant to this Section 10, one Business Day after receipt of written notice from the Trustee in the form attached hereto as Exhibit A-4 of the amount of interest and premium, if any, to be paid by the Issuers on an Interest Payment Date (as defined in the Indenture) pursuant to the terms of the Indenture and the Notes, the Escrow Agent shall release by wire transfer United States dollars to an account designated by the Trustee in such

notice in an amount equal to the amount of interest and premium, if any, payable on such Interest Payment Date as specified in such notice; provided that the Trustee shall not be entitled to release any amounts under this Section 10(d) more than two Business Days before such Interest Payment Date.

11. Miscellaneous.

(a) Entirety. This Agreement and (with respect to the Issuers and the Trustee only) the Indenture represent the entire agreement of the parties hereto with respect to the subject matter herein, and supersede all prior agreements and understandings, oral or written, if any, including any correspondence relating thereto or the transactions contemplated herein.

(b) Waivers, Amendments, Etc. Except as expressly provided hereby, the terms of this Agreement may be waived, altered, amended, modified, changed, discharged or terminated only by an instrument in writing duly executed by each of the parties hereto, subject to compliance with the provisions of the Indenture.

(c) Severability. If any provision hereof is illegal, invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible and (ii) the illegality, invalidity or unenforceability of any provision in any jurisdiction shall not affect the illegality, validity or enforceability of such provision in any other jurisdiction.

(d) Successors. This Agreement shall be binding upon the Issuers, their successors and assigns and shall inure, together with the rights and remedies hereunder, to the benefit of the Issuers and their successors and assigns, the Escrow Agent and its successors and assigns and the Trustee and its successors and assigns for the benefit of the Secured Parties.

(e) Rules of Construction. In this Agreement, words in the singular number include the plural, and in the plural include the singular; words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender; and, the word "or" is disjunctive but not exclusive. The captions and section

numbers appearing in this Agreement are inserted only as a matter of convenience. They do not define, limit or describe the scope or intent of the provisions of this Agreement.

(f) Notices. All notices, requests, consents and other communications provided for herein (including, without limitation, any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including, without limitation, by facsimile) delivered to the intended recipient at the address below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by facsimile (receipt of which is confirmed) or personally delivered (including by reputable overnight courier) or, in the case of a mailed (certified or registered, return receipt requested) notice, upon receipt, in each case given or addressed as aforesaid.

If to the Issuers:

American Casino & Entertainment Properties LLC
American Casino & Entertainment Properties Finance Corp.
2000 Las Vegas Boulevard South
Las Vegas, NV 89104
Attention: President
Attention: Chief Financial Officer
Telephone: (702) 380-7777
Facsimile: (702) 383-4738

With a copy to:

Piper Rudnick LLP
1251 Avenue of the Americas

New York, NY 10020
Attention: Steven L. Wasserman, Esq.
Telephone: (212) 835-6148
Facsimile: (212) 884-8448

If to Parent:

American Real Estate Holdings Limited Partnership
100 South Bedford Road
Mt. Kisco, NY 10549
Attention: John Saldarelli
Telephone:(914) 242-7707
Facsimile: (914) 242-9282

With a copy to:

Piper Rudnick LLP
1251 Avenue of the Americas
New York, NY 10020
Attention: Steven L. Wasserman, Esq.
Telephone: (212) 835-6148
Facsimile: (212) 884-8448

If to the Trustee:

Wilmington Trust Company
Rodney Square North
1100 North Market Street
Wilmington, DE 19890
Attention: Michael G. Oller, Jr.
Telephone: (302) 636-6410
Facsimile: (302) 636-4140

With a copy to:

Wilmington Trust Company
520 Madison Avenue, 33rd Floor
New York, NY 10022
Attention: Michael W. Diaz
Telephone: (212) 415-0509
Facsimile: (212) 415-0523

and a copy to:

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue

New York, NY 10178
Attention: Kathryn Alisbah, Esq.
Telephone: (212) 696-6913
Facsimile: (212) 697-1559

If to the Escrow Agent:

Fleet National Bank
NY EH 30903N
1185 Avenue of the Americas
New York, NY 10036
Attention: Thomas G. Carley
Attention: Frederick A. Meagher
Telephone: (212) 819-5731
Facsimile: (212) 819-6166

With a copy to:

Morrison, Cohen, Singer & Weinstein LLP
750 Lexington Avenue

New York, NY 10022
Attention: Jack Levy, Esq.
Telephone: (212) 735-8764
Facsimile: (212) 735-8708

The Issuers, the Trustee or the Escrow Agent by notice to the others may designate additional or different addresses for subsequent notices or communications.

(g) Tax Reporting. The Issuers shall be responsible for reporting all items of income, gain, expense and loss recognized in the Account.

(h) Further Assurances. At any time and from time to time, upon the request of the Issuers, Trustee or the Escrow Agent and at the sole expense of the Issuers, the parties will promptly and duly execute and deliver such further instruments and documents and take such further actions as may reasonably be requested for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted.

(i) Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. Signatures of the parties transmitted by facsimile or other electronic means shall be deemed to be their original signatures for all purposes.

(j) Governing Law; Submission to Jurisdiction; Venue. (a) SUBJECT TO COMPLIANCE WITH APPLICABLE NEVADA GAMING LAWS, THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. REGARDLESS OF ANY PROVISION IN THIS OR ANY OTHER AGREEMENT, FOR PURPOSES OF THE CODE, WITH RESPECT TO THE ACCOUNT NEW YORK SHALL BE DEEMED TO BE THE ESCROW AGENT'S JURISDICTION (WITHIN THE MEANING OF SECTIONS 8-110 AND 9-304 OF THE CODE). Any legal action or proceeding with respect to this Agreement or transactions contemplated hereby shall, except as set out in the following sentence, be brought in the courts of the State of New York located in the Borough of Manhattan, The City of New York, or of the United States for the Southern District of New York. Nothing herein shall affect the right of the Escrow Agent or the Trustee to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against the Issuers or Parent in any other jurisdiction.

(k) Consent to Jurisdiction; Service of Process. The Issuers and Parent each hereby irrevocably: (1) submits to the non-exclusive jurisdiction of any United States Federal or

New York State court located in the Borough of Manhattan, The City of New York in connection with any suit, action or proceeding arising out of, or relating to this Agreement or any transaction contemplated thereby; and (2) designates and appoints CT Corporation System, whose offices are currently located at 111 Eighth Avenue, New York, New York, as its authorized agent for receipt of service of process in any such suit, action or proceeding.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow and Security Agreement to be duly executed as of the day and year first above written.

AMERICAN CASINO & ENTERTAINMENT PROPERTIES LLC

By: American Entertainment Properties Corp., its sole member

By:_____
Name: Richard Brown
Title: President

AMERICAN CASINO & ENTERTAINMENT PROPERTIES FINANCE CORP.

By: _____
Name: Richard Brown
Title: President

AMERICAN REAL ESTATE HOLDINGS LIMITED PARTNERSHIP

By: American Property Investors, Inc., its general partner

By: _____
Name: Keith A. Meister
Title: President and Chief Executive Officer

WILMINGTON TRUST COMPANY,
as Trustee

By: _____
Name: _____
Title: _____

FLEET NATIONAL BANK,
as Escrow Agent

By: _____
Name: Thomas G. Carley
Title: Senior Vice President

EXHIBIT 21

Subsidiary	Jurisdiction
American Real Estate Holdings Limited Partnership	Delaware
Bayswater Development, LLC	Delaware
New Seabury Properties, L.L.C.	Delaware
National Energy Group, Inc.	Delaware
Stratosphere Corporation	Delaware
Stratosphere Gaming Corp.	Nevada
The Bayswater Group LLC	Delaware

EXHIBIT 31.1
CERTIFICATION OF CHIEF EXECUTIVE OFFICER

PURSUANT TO
SECTION 302(A) OF THE SARBANES-OXLEY ACT OF 2002

I, Keith A. Meister certify that:

1. I have reviewed this quarterly report on Form 10-Q of American Real Estate Partners, L.P. for the period ended March 31, 2004, (the "Report");

2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;

3. Based on my knowledge, the financial statements, and other financial information included in the Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;

b) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in the Report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this Report based on such evaluation and;

c) disclosed in this Report any changes in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting.

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of Registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

/s/ KEITH A. MEISTER

Keith A. Meister
President and Chief Executive Officer
of
American Property Investors, Inc.,
the General Partner of
American Real Estate Partners, L.P.

Date: May 10, 2004

EXHIBIT 31.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER

PURSUANT TO
SECTION 302(A) OF THE SARBANES-OXLEY ACT OF 2002

I, John P. Saldarelli, certify that:

1. I have reviewed this quarterly report on Form 10-Q of American Real Estate Partners, L.P. for the period ended March 31, 2004, (the "Report");

2. Based on my knowledge, this Report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this Report;

3. Based on my knowledge, the financial statements, and other financial information included in this Report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this Report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Registrant and we have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this Report is being prepared;

b) evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this Report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this Report based on such evaluation and;

c) disclosed in this Report any changes in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting.

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of Registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

/s/ JOHN P. SALDARELLI

John P. Saldarelli
Treasurer and Chief Financial Officer
of
American Property Investors, Inc.,
the General Partner of
American Real Estate Partners, L.P.

Date: May 10, 2004

EXHIBIT 32.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Keith A. Meister, President and Chief Executive Officer (Principal Executive Officer) of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P. (the "Registrant"), certify that to the best of my knowledge, based upon a review of the American Real Estate Partners, L.P., quarterly report on Form 10-Q for the period ended March 31, 2004 of the Registrant (the "Report"):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ KEITH A. MEISTER

KEITH A. MEISTER
PRESIDENT AND CHIEF EXECUTIVE OFFICER
OF
AMERICAN PROPERTY INVESTORS, INC.,
THE GENERAL PARTNER OF
AMERICAN REAL ESTATE PARTNERS, L.P.

Date: May 10, 2004

EXHIBIT 32.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, John P. Saldarelli, Treasurer and Chief Financial Officer (Principal Financial Officer) of American Property Investors, Inc., the General Partner of American Real Estate Partners, L.P. (the "Registrant"), certify that to the best of my knowledge, based upon a review of the American Real Estate Partners, L.P. quarterly report on Form 10-Q for the period ended March 31, 2004 of the Registrant (the "Report"):

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Registrant.

/s/ JOHN P. SALDARELLI

John P. Saldarelli
Treasurer and Chief Financial Officer
American Property Investors, Inc.,
the General Partner of
American Real Estate Partners, L.P.

Date: May 10, 2004