

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

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**FORM 8-K**

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): June 20, 2005

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**American Real Estate Partners, L.P.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation)

**1-9516**

(Commission File Number)

**13-3398766**

(IRS Employer  
Identification No.)

**100 South Bedford Road, Mt. Kisco, NY**  
(Address of principal executive offices)

**10549**  
(Zip Code)

Registrant's telephone number, including area code: **(914) 242-7700**

**N/A**

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(Former name or former address, if  
changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Section 8—Other Events**

**Item 8.01 Other Events**

As a result of the reclassification of certain real estate and resorts to properties held for sale during the first quarter of 2005, we have reclassified the income and expenses of such properties to discontinued operations for the first quarter of 2005 and for all prior periods. These reclassifications had no effect on our reported net income or net income per limited partnership unit. Accordingly, we are providing updated information for the following: Selected Financial Data, Management's Discussion and Analysis of Financial Condition and Results of Operations, Financial Statements and Supplementary Data, Exhibits and Financial Statement Schedules, for the periods contained in our Annual Report on Form 10-K for the year ended December 31, 2004 ("Form 10-K"). All other items of the Form 10-K remain unchanged.

**Section 9—Financial Statements and Exhibits**

**Item 9.01 Financial Statements and Exhibits**

(c) Exhibits

- 99.1 Item 6. Selected Financial Data of Form 10-K.
- 99.2 Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations of Form 10-K.
- 99.3 Item 8. Financial Statements of Form 10-K.
- 99.4 Item 15. Exhibits, Financial Statement Schedules.

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**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 hereunto duly authorized.

AMERICAN REAL ESTATE PARTNERS, L.P.  
(Registrant)

By: American Property Investors, Inc.  
General Partner

By: /s/ JOHN P. SALDARELLI

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John P. Saldarelli  
Vice President, Chief Financial Officer, Secretary and Treasurer

Date: June 20, 2005

## Exhibit Index

- 99.1 Item 6. Selected Financial Data of Form 10-K.
- 99.2 Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations of Form 10-K.
- 99.3 Item 8. Financial Statements of Form 10-K.
- 99.4 Item 15. Exhibits, Financial Statement Schedules.

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[SIGNATURES](#)

[Exhibit Index](#)

**SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA**

The following table summarizes certain selected historical consolidated financial data of AREP, which you should read in conjunction with its financial statements and the related notes contained in this Form 8-K and "Management's Discussion and Analysis of Financial Condition and Results of Operations." The selected historical consolidated financial data as of December 31, 2004 and 2003, and for the years ended December 31, 2004, 2003 and 2002, have each been derived from our audited consolidated financial statements at those dates and for those periods, contained elsewhere in this report. The selected historical consolidated financial data as of December 31, 2002 and 2001 and for the year ended December 31, 2001 have each been derived from our audited consolidated financial statements at that date and for that period, not contained in this report. The selected historical consolidated financial data as of and for the year ended December 31, 2000 has been derived from our consolidated financial statements (unaudited) at that date and for that period. In addition, certain amounts have been reclassified as discontinued operations in accordance with Statement of Financial Accounting Standards No. 144.

|   | Year Ended December 31,               |            |            |            |            |
|---|---------------------------------------|------------|------------|------------|------------|
|   | 2004                                  | 2003       | 2002       | 2001       | 2000       |
|   | (in \$000's, except per unit amounts) |            |            |            |            |
| Total revenues  | \$ 452,012                            | \$ 368,946 | \$ 434,652 | \$ 414,545 | \$ 378,179 |
| Operating income  | \$ 88,837                             | \$ 68,979  | \$ 79,387  | \$ 63,938  | \$ 66,356  |
| Other gains (losses):   |                                       |            |            |            |            |
| Gain on sale of marketable equity and debt securities                     | 40,159                                | 2,607      | —          | 6,749      | —          |
| Unrealized gains (losses) on securities sold short                        | (23,619)                              | —          | —          | —          | —          |
| Impairment loss on equity interest in GB Holdings, Inc.                   | (15,600)                              | —          | —          | —          | —          |
| (Loss) gain on sale of other assets                                       | —                                     | (1,503)    | (353)      | 27         | —          |
| Gain on sales and disposition of real estate                              | 5,262                                 | 7,121      | 8,990      | 1,737      | 6,763      |
| Write-down of marketable equity and debt securities and other investments | —                                     | (19,759)   | (8,476)    | —          | —          |
| (Loss) gain on limited partnership interests                              | —                                     | —          | (3,750)    | —          | 3,461      |
| Minority interest   | —                                     | —          | (1,943)    | (450)      | (2,747)    |
| Income from continuing operations before income taxes                     | 95,039                                | 57,445     | 73,855     | 72,001     | 73,833     |
| Income tax (expense) benefit  | (16,763)                              | 1,573      | (10,096)   | 25,664     | 379        |
| Income from continuing operations   | 78,276                                | 59,018     | 63,759     | 97,665     | 74,212     |
| Discontinued operations:  |                                       |            |            |            |            |
| Income from discontinued operations                                       | 7,500                                 | 7,653      | 6,937      | 7,944      | 6,260      |
| Gain on sales and disposition of real estate                              | 75,197                                | 3,353      | —          | —          | —          |
| Total income from discontinued operations                                 | 82,697                                | 11,006     | 6,937      | 7,944      | 6,260      |
| Net earnings  | \$ 160,973                            | \$ 70,024  | \$ 70,696  | \$ 105,609 | \$ 80,472  |
| Net Earnings Attributable to:   |                                       |            |            |            |            |
| Limited partners  | \$ 152,507                            | \$ 59,360  | \$ 63,168  | \$ 66,190  | \$ 72,225  |
| General partner   | 8,466                                 | 10,664     | 7,528      | 39,419     | 8,247      |
| Net earnings  | \$ 160,973                            | \$ 70,024  | \$ 70,696  | \$ 105,609 | \$ 80,472  |

Year Ended December 31,

|   | 2004           | 2003           | 2002(1)        | 2001(1)        | 2000(1)        |
|---|----------------|----------------|----------------|----------------|----------------|
| (in \$000's except per unit amounts)  |                |                |                |                |                |
| <b>Net earnings per limited partnership unit:</b>                                       |                |                |                |                |                |
| Basic earnings:   |                |                |                |                |                |
| Income from continuing operations   | \$ 1.55        | \$ 1.00        | \$ 1.12        | \$ 1.17        | \$ 1.35        |
| Income from discontinued operations   | 1.76           | 0.24           | 0.15           | 0.17           | 0.13           |
| <b>Basic earnings per LP Unit</b>   | <b>\$ 3.31</b> | <b>\$ 1.24</b> | <b>\$ 1.27</b> | <b>\$ 1.34</b> | <b>\$ 1.48</b> |
| Weighted average limited partnership units outstanding                                  | 46,098,284     | 46,098,284     | 46,098,284     | 46,098,284     | 46,098,284     |
| Diluted earnings:   |                |                |                |                |                |
| Income from continuing operations   | \$ 1.48        | \$ 0.94        | \$ 1.00        | \$ 1.05        | \$ 1.18        |
| Income from discontinued operations   | 1.57           | 0.19           | 0.12           | 0.14           | 0.11           |
| <b>Diluted earnings per LP Unit</b>   | <b>\$ 3.05</b> | <b>\$ 1.13</b> | <b>\$ 1.12</b> | <b>\$ 1.19</b> | <b>\$ 1.29</b> |
| Weighted average limited partnership units and equivalent partnership units outstanding | 51,542,312     | 54,489,943     | 56,466,698     | 55,599,112     | 56,157,079     |

**Other financial data:**

|  |           |           |           |           |           |
|--|-----------|-----------|-----------|-----------|-----------|
| Capital expenditures (excluding property acquisitions) | \$ 16,221 | \$ 33,324 | \$ 21,896 | \$ 68,199 | \$ 52,598 |
| At December 31,  |           |           |           |           |           |
|  | 2004      | 2003      | 2002(1)   | 2001(1)   | 2000(1)   |
| (in \$000's)   |           |           |           |           |           |

**Balance Sheet Data:**

|  |                     |                     |                     |                     |                     |
|--|---------------------|---------------------|---------------------|---------------------|---------------------|
| Cash and cash equivalents                                      | \$ 762,708          | \$ 487,498          | \$ 79,540           | \$ 83,975           | \$ 172,621          |
| Hotel, casino and resort operating properties                  | 339,492             | 340,229             | 335,121             | 339,201             | 264,566             |
| Investment in U.S. Government and Agency obligations           | 102,331             | 61,573              | 336,051             | 313,641             | 475,267             |
| Other investments  | 245,948             | 50,328              | 54,216              | 10,529              | 4,289               |
| Total assets   | 2,263,057           | 1,646,606           | 1,706,031           | 1,721,100           | 1,566,597           |
| Mortgages payable  | 91,896              | 180,989             | 171,848             | 166,808             | 182,049             |
| Senior secured notes payable—7.85%                             | 215,000             | —                   | —                   | —                   | —                   |
| Senior unsecured notes payable—8 <sup>1</sup> / <sub>8</sub> % | 350,598             | —                   | —                   | —                   | —                   |
| Liability for preferred limited partnership units(1)           | 106,731             | 101,649             | —                   | —                   | —                   |
| <b>Partners' equity</b>  | <b>\$ 1,303,126</b> | <b>\$ 1,270,214</b> | <b>\$ 1,245,437</b> | <b>\$ 1,136,452</b> | <b>\$ 1,154,400</b> |

- (1) On July 1, 2003, we 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, our preferred units, which are an unconditional obligation, have been reclassified from "Partners' equity" to a liability account in the consolidated balance sheets and the preferred pay-in-kind distribution for the period from July 1, 2003 to December 31, 2003 of \$2.4 million and all future distributions have been and will be recorded as "Interest expense" in the consolidated statements of earnings.

QuickLinks

[EXHIBIT 99.1](#)



**Item 7. 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 to the date hereof.

Overview

We are a diversified holding company engaged in a variety of businesses. Our primary business strategy is to continue to grow our core businesses, including real estate, gaming and entertainment, and oil and gas. In addition, we seek to acquire undervalued assets and companies that are distressed or in out of favor industries.

Our businesses currently include rental real estate; real estate development; hotel and resort operations; hotel and casino operations; oil and gas exploration and production; and investments in equity and debt securities. We may also seek opportunities in other sectors, including energy, industrial manufacturing, insurance and asset management.

In continuation of our strategy to grow our core businesses, we have recently acquired, and have entered into agreements to acquire, additional gaming and entertainment and oil and gas assets from affiliates of Mr. Icahn. See "Pending Acquisitions."

To capitalize on favorable real estate market conditions and the mature nature of our commercial real estate portfolio, we have offered our rental real estate portfolio for sale. During the year ended December 31, 2004, we sold 57 rental real estate properties for approximately \$245.4 million. These properties were encumbered by mortgage debt of approximately \$93.8 million that we repaid from the sale proceeds. As of December 31, 2004, we owned 71 rental real estate properties with a book value of approximately \$196.3 million, individually encumbered by mortgage debt which aggregated approximately \$91.9 million. As of December 31, 2004, we had entered into conditional sales contracts or letters of intent for 15 rental real estate properties. Selling prices for the properties covered by the contracts or letters of intent would total approximately \$97.9 million. These properties are encumbered by mortgage debt of approximately \$36.0 million. Because of the conditional nature of sales contracts and letters of intent, we cannot be certain that these properties will be sold. We continue to seek purchasers for our remaining rental real estate portfolio. We cannot be certain that we will receive offers satisfactory to us or, if we receive offers, any of the properties will ultimately be sold at prices acceptable to us. From January 1, 2005 through March 31, 2005, we sold four rental real estate properties and a golf resort for approximately \$51.9 million. These properties were encumbered by approximately \$10.7 million of mortgage debt.

Historically, substantially all of our real estate assets leased to others have been net-leased to single corporate tenants under long-term leases. With certain exceptions, these tenants are required to pay all expenses relating to the leased property and therefore we are not typically responsible for payment of expenses, such as maintenance, utilities, taxes and insurance associated with such properties.

Expenses relating to environmental clean-up related to our development and rental real estate operations have not had a material effect on our earnings, capital expenditures or competitive position. We believe that substantially all such costs would be the responsibility of the tenants pursuant to lease terms. While most tenants have assumed responsibility for the environmental conditions existing on their leased property, there can be no assurance that we will not be deemed to be a responsible party or that the tenant will bear the costs of remediation. Also, as we acquire more operating properties, our exposure to environmental clean-up costs may increase. We have completed Phase I environmental site assessments on most of our properties through third-party consultants. Based on the results of these Phase I environmental site assessments, the environmental consultant has recommended that certain sites may have environmental conditions that should be further reviewed. We have notified each of the responsible tenants to attempt to ensure that they cause any required investigation and/or

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remediation to be performed and most tenants continue to take appropriate action. However, if the tenants fail to perform responsibilities under their leases referred to above, we could potentially be liable for these costs. Based on the limited number of Phase II environmental site assessments that have been conducted by the consultants, there can be no accurate estimate of the need for or extent of any required remediation, or the costs thereof. Phase I environmental site assessments will also be performed in connection with new acquisitions and with such property refinancings as we may deem necessary and appropriate. We are in the process of updating our Phase I environmental site assessments for certain of our environmentally sensitive properties. Approximately 75 updates were completed in 2003. No additional material environmental conditions were discovered. Although we conducted environmental investigations in 2004 for newly acquired properties and no environmental concerns were disclosed by such investigations, we did not conduct any updates to the Phase I environmental site assessments for our remaining portfolio in 2004.

We have made investments in the gaming industry through our ownership of Stratosphere Casino Hotel & Tower in Las Vegas, Nevada and through our purchase of securities of the entity which owns The Sands Hotel and Casino in Atlantic City, New Jersey. One of our subsidiaries, formed for this purpose, entered into an agreement in January 2004 to acquire two Las Vegas hotels and casinos, Arizona Charlie's Decatur and Arizona Charlie's Boulder, from Mr. Icahn and an entity affiliated with Mr. Icahn, for aggregate consideration of \$125.9 million. Upon obtaining all approvals necessary under gaming laws, the acquisition was completed in May 2004. We have entered into an agreement with affiliates of Mr. Icahn pursuant to which we will acquire approximately 41.2% of the outstanding common stock of GB Holdings and warrants to purchase, upon the occurrence of certain events, approximately 11.3% of the fully diluted common stock of Atlantic Holdings, the indirect owner of The Sands Hotel and Casino. We are considering additional gaming industry investments. These investments may include acquisitions from, or be made in conjunction with, our affiliates, provided that the terms thereof are fair and reasonable to us.

We have entered into agreements with affiliates of Mr. Icahn to purchase the other membership interest in NEG Holding and 100% of the equity of TransTexas and Panaco, each an oil and gas exploration and production company. On April 6, 2005, we completed the purchase of TransTexas for \$180.0 million of cash. A Form 8-K was filed on May 10, 2005, which included AREP's supplemental consolidated historical financial statements to give effect to the acquisition of TransTexas. See "Item 1—Business—Pending Acquisitions." NEG Operating, TransTexas and Panaco are affected by extensive regulation through various federal, state and local laws and regulations relating to the exploration for and development, production, gathering and marketing of oil and gas. NEG Operating, TransTexas and Panaco are also subject to numerous environmental laws, including but not limited to, those governing management of waste, protection of water, air quality, the discharge of materials into the environment, and preservation of natural resources. Non-compliance with environmental laws and the discharge of oil, natural gas, or other materials into the air, soil or water may give rise to liabilities to the government and third parties, including civil and criminal penalties, and may require us to incur costs to remedy the discharge. Laws and regulations protecting the environment have become more stringent in recent years, and may in certain circumstances impose retroactive, strict, and joint and several liabilities rendering entities liable for environmental damage without regard to negligence or fault. We cannot assure you that new laws and regulations, or modifications of or new interpretations of existing laws and regulations, will not substantially increase the cost of compliance or otherwise adversely affect our oil and gas operations and financial condition or that material indemnity claims will not arise with respect to properties that we acquire. While we do not anticipate incurring material costs in connection with environmental compliance and remediation, we cannot guarantee that material costs will not be incurred.

In accordance with GAAP, 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 (and, in the case of the pending acquisitions, following the closing of the acquisitions, will be) restated on a combined basis.

## **Results of Operations**

### ***Calendar Year 2004 Compared to Calendar Year 2003***

Gross revenues increased by \$83.1 million, or 22.5%, during 2004 as compared to 2003. This increase reflects increases of \$37.2 million in hotel and casino operating revenues, \$21.8 million in

interest income on U.S. government and agency obligations and other investments, \$13.3 million in land, house and condominium sales, \$4.3 million in accretion of investment in NEG Holding LLC, \$3.8 million in hotel and resort operating income, \$3.6 million in NEG management fees, \$1.4 million in equity in earnings of GB Holdings, \$0.8 million in rental income, and \$0.1 million in dividend and other income. These increases were partially offset by a decrease of \$3.2 million in interest income on financing leases. The increase in hotel and casino operating income is primarily due to an increase in casino, hotel, and food and beverage revenues. The increase in interest income on U.S. government and agency obligations and other investments is primarily due to the repayment of two mezzanine loans, on which interest was accruing, and increased interest income from other investments. The increase in land, house and condominium sales is primarily due to sales of higher priced units. The increase in NEG management fees is primarily due to management fees received from the TransTexas Gas Corporation. NEG entered into a management agreement with TransTexas in August 2003. The decrease in interest income on financing leases is primarily due to property sales and reclassifications.

Expenses increased by \$63.2 million, or 21.1%, during 2004, as compared to 2003. This increase reflects increases of \$25.0 million in interest expense, \$10.7 million in hotel and casino operating expenses, \$9.3 million in cost of land, house and condominium sales, \$6.9 million in general and administrative expenses, \$5.0 million in depreciation and amortization, \$4.0 million in hotel and resort operating expenses and \$2.4 million in provision for loss on real estate. These increases were partially offset by a decrease of \$0.1 million in property expenses. The increase in interest expense is primarily attributable to interest on the \$215 million principal amount of 7.85% senior secured notes issued by American Casino, the \$353 million principal amount of 8<sup>1</sup>/<sub>8</sub>% senior notes issued by us in May 2004 and interest expense pertaining to preferred limited partnership pay-in-kind distribution. The increase in hotel and casino operating expenses is primarily attributable to increased costs associated with increased revenues. The increase in the land, house and condominium expenses is primarily attributable to increased sales as discussed above. The increase in general and administrative expenses is primarily attributable to expenses incurred in connection with the increase in NEG management fees and as a result of the Grand Harbor acquisition in July 2004. The increase in depreciation and amortization is primarily due to increased depreciation and amortization with respect to American Casino.

Operating income increased during 2004 by \$19.8 million, or 28.7%, to \$88.8 million from \$69.0 million in 2003, as detailed above.

Earnings from land, house and condominium operations increased by \$4.0 million or 96.0% to \$8.1 million in 2004 due to sales of higher priced units. Based on current information, sales are expected to decrease in early 2005. However, the Company currently expects that the effects of the acquisition of Grand Harbor, completed in July 2004, and the approval in March 2004 of a 35 unit sub-division in Westchester County, New York, should provide increased earnings from these operations in the second half of 2005.

Earnings from hotel and casino operating properties increased by \$26.4 million, or 57.5%, to \$72.4 million during 2004 due to increased revenues at each of our three properties.

Gain on property transactions from continuing operations decreased by \$1.9 million or 26.1%, to \$5.3 million, in 2004.

A loss on sale of other assets of \$1.5 million was recorded in 2003. There was no such loss in 2004.

A gain on sale of marketable debt securities of \$40.1 million was recorded in 2004, as compared to a gain of \$2.6 million in 2003.

A write-down of marketable equity and debt securities and other investments of \$19.8 million was recorded in 2003. There was no such write-down in 2004.

Unrealized losses on securities sold short of \$23.6 million was recorded in 2004. There were no such losses in 2003. At March 1, 2005, the \$23.6 million of unrealized losses has been reversed and a net gain of \$3 million recorded.

An impairment loss on equity interest in GB Holdings of \$15.6 million was recorded in 2004. The impairment reflects the price, \$12 million, subject to increases up to \$6 million based upon Atlantic Holdings meeting earnings targets in 2005 and 2006, used in the agreement to purchase, from an affiliate of Mr. Icahn, shares of GB Holdings common stock representing approximately 41.2% of the outstanding GB Holdings common stock. The purchase price pursuant to the agreement was less than

our carrying value, approximately \$26.2 million, for the approximately 36.3% of the outstanding GB Holdings common stock that we own. There was no such loss in 2003.

Income from continuing operations before income taxes increased by \$37.6 million in 2004 as compared to 2003, as detailed above.

Income tax expense of \$16.8 million was recorded in 2004 as compared to a \$1.6 million income tax benefit in 2003 due to a reduction in the tax valuation allowance in 2003. Income tax expense was recorded by our corporate subsidiaries NEG and American Casino.

Income from continuing operations increased by \$19.3 million, or 32.7%, to \$78.3 million in 2004.

Income from discontinued operations increased by \$71.7 million to \$82.7 million in 2004. This reflects our decision to capitalize on favorable real estate markets and the mature nature of our commercial real estate portfolio, which resulted in gains on property dispositions.

Net earnings for 2004 increased by \$90.9 million, or 129.9%, to \$161.0 million. This primarily was attributable to increased income from discontinued operations (\$71.7 million), increased gain on marketable debt securities (\$37.6 million), increased net hotel and casino operating income (\$26.4 million) and increased interest income (\$21.8 million). These gains were partially offset by increased interest expense (\$25.0 million), increase in unrealized losses on securities sold short (\$23.6 million), increased income tax expense (\$18.3 million) and impairment loss on equity interest in GB Holdings, Inc. (\$15.6 million). Net earnings in 2003 also was affected by a write down of other investments of \$19.8 million.

Upon completion of the acquisitions described in Note 29 of the consolidated financial statements, the Company will consolidate the financial statements of TransTexas, Panaco, and GB Holdings. Certain intercompany transactions will be eliminated. As a result, certain intercompany transactions will be eliminated, including, along others, the equity interest in GB Holdings for which we recorded an impairment loss in 2004, and NEG management fees.

#### ***Calendar Year 2003 Compared to Calendar Year 2002***

Gross revenues decreased by \$65.7 million, or 15.1%, during 2003 as compared to 2002. This decrease reflects decreases of (1) \$62.8 million in land, house and condominium sales, (2) \$8.0 million in interest income on U.S. government and agency obligations and other investments, (3) \$3.8 million in equity in earnings of GB Holdings, Inc., (4) \$2.7 million in accretion of investment in NEG Holding, (5) \$1.6 million in financing lease income and (6) \$0.5 million in hotel and resort operating income, partially offset by increases of \$12.8 million in hotel and casino operating income, \$0.2 million in rental income, \$0.3 million in dividend and other income and \$0.3 million in NEG management fee. The decrease in land, house and condominium sales is primarily due to a decrease in the number of units sold, as the Grassy Hollow, Gracewood and Stone Ridge properties were depleted by sales. During 2003, Hammond Ridge received necessary approvals and, along with Penwood, have commenced lot sales. The decrease in interest income on U.S. government and agency obligations and other investments is primarily attributable to the prepayment of a loan to Mr. Icahn in 2003 and a decline in interest rates on U.S. Government and Agency obligations as higher rate bonds were called in 2002. The decrease in equity in earnings of GB Holdings is due to decreased casino revenue primarily attributable to a reduction in the number of table games as new slot machines were added in 2002. This business strategy had a negative effect on casino operations and was changed in 2003 to focus on the mid to high-end slot customer with a balanced table game business. The decrease in accretion of investment in NEG Holding is primarily attributable to priority distributions received from NEG Holding in 2003. The decrease in financing lease income is the result of lease expirations, reclassifications of financing leases and normal financing lease amortization. The decrease in rental income is primarily attributable to property dispositions. The increase in hotel and casino operating income is primarily attributable to an increase in hotel, food and beverage revenues and a decrease in promotional allowances. The average daily room rate, or ADR, at the Stratosphere increased \$3 to \$51 and percentage occupancy increased approximately 0.2% to 89.8%. The ADR at Arizona Charlie's Decatur decreased \$1 to \$43 and percentage occupancy increased 10.9% to 85.3%. The ADR at Arizona Charlie's Boulder increased less than \$1 to \$43 and percentage occupancy increased 0.5% to 55.7%.

Expenses decreased by \$55.3 million, or 15.6%, during 2003 as compared to 2002. This decrease reflects decreases of \$45.5 million in the cost of land, house and condominium sales, \$6.2 million in

interest expense, \$1.8 million in hotel and resort operating expenses, \$1.1 million in hotel and casino operating expenses and \$2.5 million in provision for loss on real estate, partially offset by increases of \$0.6 million in rental property expenses and \$1.2 million in depreciation and amortization. The decrease in the cost of land, house and condominium sales is due to decreased sales. Costs as a percentage of sales decreased from 72% in 2002 to 69% in 2003. The decrease in interest expense is primarily due to repayment of debt by NEG and our purchase of the NEG Notes in October 2003. The decrease in hotel and resort operating expenses is due to a decrease in payroll and related expenses. The decrease in hotel and casino operating expenses is primarily attributable to a decrease in selling, general and administrative expenses. Costs as a percentage of sales decreased from 87% in 2002 to 83% in 2003. A provision for loss on real estate of \$0.8 million was recorded in 2003 as compared to \$3.2 million in 2002. In 2002, there were more properties vacated due to tenant bankruptcies than in 2003.

Operating income decreased during 2003 by \$10.4 million compared to 2002 as detailed above.

Earnings from land, house and condominium operations decreased significantly in 2003 compared to 2002 due to a decline in inventory of completed units available for sale. Based on current information, sales will increase moderately during 2004. 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 could be constrained by recessionary pressures, international tensions and competition.

Gain on property transactions from continuing operations decreased by \$1.9 million during 2003 as compared to 2002 due to the size and number of transactions.

A loss on sale of other assets of \$1.5 million was recorded in 2003 as compared to \$0.4 million loss in 2002.

A write-down of marketable equity and debt securities and other investments of \$19.8 million, pertaining to our investment in the Philip notes, was recorded in 2003 as compared to a write-down of \$8.5 million in 2002. These write downs relate to our investment in Philip Services Corp., which filed for bankruptcy protection in June 2003.

A write-down of a limited partnership investment of \$3.8 million was recorded in 2002. There was no such write-down in 2003.

A gain on sale of marketable equity securities of \$2.6 million was recorded in 2003. There was no such gain in 2002.

Minority interest in the net earnings of Stratosphere Corporation was \$1.9 million during 2002. As a result of the acquisition of the minority interest in December 2002, there was no minority interest in Stratosphere in 2003 or thereafter.

Income from continuing operations before income taxes decreased by \$16.4 million in 2003 as compared to 2002, as detailed above.

An income tax benefit of \$1.6 million was recorded in 2003 as compared to an expense of \$10.1 million in 2002. The effective tax rate on earnings of taxable subsidiaries was positively affected in 2003 by a reduction in the valuation allowance in deferred tax assets. We expect our effective tax rate on earnings of taxable subsidiaries to increase significantly in 2004.

Income from continuing operations decreased by \$4.8 million in 2003 as compared to 2002, as detailed above.

Income from discontinued operations increased by \$4.1 million in 2003 as compared to 2002, primarily due to gains on property dispositions.

Net earnings for 2003 decreased by \$0.7 million as compared to 2002 primarily due to an increase in the write-down of marketable equity and debt securities and other investments of \$11.3 million, decreased earnings from land, house and condominium operations of \$17.2 million, decreased interest income of \$8.0 million and decreased equity in earnings of GB Holdings of \$3.8 million, partially offset by decreased income tax expense of \$11.7 million, decreased interest expense of \$6.2 million, decreased write-down of limited partnership interests of \$3.8 million, increased earnings from hotel and casino operations of \$13.9 million, increased gain on the sale of marketable equity securities of \$2.6 million and an increase in income from discontinued operations of \$4.1 million.

## Liquidity and Capital Resources

Net cash provided by operating activities was \$51.4 million for 2004 as compared to \$21.9 million for 2003. This increase of \$29.5 million was primarily due to an increase in hotel and casino operations (\$26.4 million), an increase in interest income (\$21.8 million), repayment of accounts payable and accrued expenses in 2003 and increased accounts payable and accrued expenses in 2004 (\$129.8 million) and an increase in cash flow from other operations (\$10.0 million), partially offset by an increase in interest expense (\$25.0 million), an increase in due from brokers (\$123.0 million) and an increase in receivables and other assets (\$10.5 million).

The following table reflects our contractual cash obligations as of December 31, 2004, due over the indicated periods and when they come due (in \$ millions):

|  | Less than<br>1 Year | 1-3 Years | 3-5 Years | After<br>5 Years | Total      |
|--|---------------------|-----------|-----------|------------------|------------|
| Mortgages payable                        | \$ 4.8              | \$ 40.9   | \$ 9.3    | \$ 36.9          | \$ 91.9    |
| Senior secured notes payable             | —                   | —         | —         | 215.0            | 215.0      |
| Senior unsecured notes payable           | —                   | —         | —         | 353.0            | 353.0      |
| Senior debt interest                     | 78.3                | 159.5     | 159.5     | 211.3            | 608.6      |
| Acquisition of TransTexas Gas Corp.      | 180.0               | —         | —         | —                | 180.0      |
| Construction and development obligations | 55.0                | —         | —         | —                | 55.0       |
| Total                                    | \$ 318.1            | \$ 200.4  | \$ 168.8  | \$ 816.2         | \$ 1,503.5 |

### Mortgages

During the years ended December 31, 2004 and 2003, approximately \$5.2 million and \$6.5 million, respectively, of mortgage principal payments were repaid. These amounts do not include mortgage debt repaid in connection with sales of real estate. In 2004, mortgage financing proceeds were \$10.0 million on commercial condo units located New York City. In May 2003, we obtained mortgage financing in the principal amount of \$20.0 million on a distribution facility located in Windsor Locks, Connecticut. We intend to use asset sale, financing and refinancing proceeds for new investments.

### Long-Term Debt

In January 2004, ACEP issued senior secured notes due 2012. The notes, in the aggregate principal amount of \$215.0 million, bear interest at the rate of 7.85% per annum. ACEP used the proceeds of the offering for the Arizona Charlie's acquisitions, to repay intercompany indebtedness and for distributions to AREH. ACEP also has a \$20.0 million credit facility. At December 31, 2004, there were no borrowings under the credit facility. The restrictions imposed by ACEP's senior secured notes and the credit facility likely will preclude our receiving payments from the operations of our principal hotel and gaming properties. ACEP accounted for 67% of our revenues and 34% of our operating income in 2004.

ACEP's 7.85% senior secured notes due 2012 restrict the payment of cash dividends or distributions by ACEP, the purchase of its equity interests, the purchase, redemption, defeasance or acquisition of debt subordinated to ACEP's notes and investments as "restricted payments." ACEP's notes also prohibit the incurrence of debt, or the issuance of disqualified or preferred stock, as defined by ACEP, with certain exceptions, provided that ACEP may incur debt or issue disqualified stock if, immediately after such incurrence or issuance, the ratio of consolidated cash flow to fixed charges (each as defined) for the 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 disqualified stock or preferred stock is issued would have been at least 2.0 to 1.0, determined on a pro forma basis giving effect to the debt incurrence or issuance. As of December 31, 2004, such ratio was 3.9 to 1.0. The ACEP notes also restrict the creation of liens, the sale of assets, mergers, consolidations or sales of substantially all of its assets, the lease or grant of a license, concession, other agreements to occupy, manage or use our assets, the issuance of capital stock of restricted subsidiaries and certain related party transactions. The ACEP notes allow it to incur indebtedness, among other things, of up to \$50 million under credit facilities, non-recourse financing of up to \$15 million to finance the construction, purchase or lease of personal or real property used in its business, permitted affiliate subordinated indebtedness (as defined), the issuance of additional 7.85% senior secured notes due 2012 in an aggregate principal amount not to exceed 2.0 times net cash

proceeds received from equity offerings and permitted affiliate subordinated debt, and additional indebtedness of up to \$10.0 million.

Additionally, ACEP's senior secured revolving credit facility allows for borrowings of up to \$20.0 million, including the issuance of letters of credit of up to \$10.0 million. Loans made under the senior secured revolving facility will mature and the commitments under them will terminate in January 2008. At December 31, 2004, there were not any borrowings or letters of credit outstanding under the facility. The facility contains restrictive covenants similar to those contained in the 7.85% senior secured notes due 2012. In addition, the facility requires that, as of the last date of each fiscal quarter, ACEP's ratio of net property, plant and equipment for key properties, as defined, to consolidated first lien debt be not less than 5.0 to 1.0 and ACEP's ratio of consolidated first lien debt to consolidated cash flow not be more than 1.0 to 1.0. At December 31, 2004, these ratios were 83.9 to 1.0 and 0.1 to 1.0, respectively.

On May 12, 2004, we and AREP Finance issued senior notes due 2012. The notes, in the aggregate principal amount of \$353.0 million, and priced at 99.266% of principal amount, bear interest at a rate of  $8\frac{1}{8}\%$  per annum. The notes are guaranteed by AREH. Net proceeds from the offering have been and will continue to 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 February 7, 2005, we and AREP Finance issued senior notes due 2013. The notes, in the aggregate principal amount of \$480 million, bear interest at a rate of  $7\frac{1}{8}\%$  per annum. The notes are guaranteed by AREH. Net proceeds from the offering will be used to fund the acquisition of TransTexas, to pay related fees and expenses, and 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.

Our  $8\frac{1}{8}\%$  senior notes due 2012 and  $7\frac{1}{8}\%$  notes due 2013 restrict the payment of cash dividends or distributions, the purchase of equity interests or the purchase, redemption, defeasance or acquisition of debt subordinated to the  $8\frac{1}{8}\%$  senior notes due 2012 and  $7\frac{1}{8}\%$  notes due 2013. The notes also restrict the incurrence of debt, or the issuance of disqualified stock, as defined, with certain exceptions, provided that we may incur debt or issue disqualified stock if, immediately after such incurrence or issuance, the ratio of the aggregate principal amount of all outstanding indebtedness of AREP and its subsidiaries on a consolidated basis to the tangible net worth of AREP and its subsidiaries on a consolidated basis would have been less than 1.75 to 1.0. As of December 31, 2004, such ratio was 0.5 to 1.0, and 0.87 to 1.0 giving pro forma effect to the issuance of the  $7\frac{1}{8}\%$  notes due 2013. In addition, both issues of notes require that on each quarterly determination date that the Fixed Charge Coverage Ratio of us and the guarantor of the notes (currently only AREH) for the four consecutive fiscal quarters most recently completed prior to such quarterly determination date be at least 1.5 to 1.0. For the four quarters ended December 31, 2004, such ratio was 2.98 to 1.0. If the ratio is less than 1.5 to 1.0, we will be deemed to have satisfied this test if there is deposited cash, which together with cash previously deposited for such purpose and not released, equal to the amount of interest payable on the notes for one year. If at any subsequent quarterly determination date, the ratio is at least 1.5 to 1.0, such deposited funds will be released to us. The notes also require, on each quarterly determination date, that the ratio of total unencumbered assets, as defined, to the principal amount of unsecured indebtedness, as defined, be greater than 1.5 to 1.0 as of the last day of the most recently completed fiscal quarter. As of December 31, 2004, such ratio was 5.0 to 1.0, and 2.7 to 1.0, giving pro forma effect to the issuance of the  $7\frac{1}{8}\%$  notes due 2013. The notes also restrict the creation of liens, mergers, consolidations and sales of substantially all of our assets, and transactions with affiliates. As of December 31, 2004, based upon these tests, on a pro forma basis, giving effect to the issuance of the  $7\frac{1}{8}\%$  notes due 2013, we and AREH could have incurred up to approximately \$1.1 billion of additional indebtedness.

Notes issued by GB Holdings and Atlantic Holdings also contain restrictions on dividends and distributions and loans to us, as well as other transactions with us. The operating subsidiary of NEG Holding, of which we have agreed to acquire a membership interest, has a credit agreement which contains covenants that have the effect of restricting dividends or distributions. These, together with the ACEP indenture and the indenture governing the notes, likely will preclude our receiving payments from the operations of our principal hotel and casino and certain of our oil and gas properties.

### **Asset Sales and Purchases**

During the year ended December 31, 2004, we sold 57 rental real estate properties for approximately \$245.4 million, which were encumbered by mortgage debt of approximately \$93.8 million which was repaid from the sales proceeds. As of December 31, 2004, we had entered into conditional sales contracts or letters of intent for 15 additional rental real estate properties, 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 \$97.9 million. These properties are encumbered by mortgage debt of approximately \$36.0 million.

Net proceeds from the sale or disposal of portfolio properties totaled approximately \$151.6 million in the year ended December 31, 2004. During 2003, net sales proceeds totaled approximately \$20.6 million.

The types of assets we are pursuing, including 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, require significant capital investment or require us to maintain a strong capital base in order to own, develop and reposition these assets.

#### **Capital Expenditures**

Capital expenditures for real estate, hotel and casino and hotel and resort operations were approximately \$16.2 million and \$33.3 million during the year ended December 31, 2004 and 2003, respectively. In the year ended December 31, 2004, we acquired a property for approximately \$14.6 million, a hotel and resort property for approximately \$16.5 million and development property for approximately \$62.2 million, the latter two acquired in the Grand Harbor acquisition. We anticipate that, for 2005, capital expenditures for our current real estate and hotel and casino and hotel and resort operations will be approximately \$28.1 million.

#### **Leases**

In 2003, 17 leases covering 17 rental real estate properties and representing approximately \$2.2 million in annual rentals expired. Twelve leases originally representing \$1.6 million in annual rental income were renewed for \$1.4 million in annual rentals. Such renewals are generally for a term of five years. Five properties with annual rental income of \$0.6 million were not renewed.

In 2004, 11 leases covering 11 rental real estate properties and representing approximately \$1.8 million in annual rentals expired. Eight leases representing \$1.5 million in annual rental income were renewed for \$1.5 million in annual rentals. Such renewals are generally for a term of five years. Three properties with annual rentals of \$0.3 million were not renewed.

In 2005, 14 leases covering 24 rental real estate properties representing approximately \$3.6 million in annual rentals are scheduled to expire. Six leases representing approximately \$2.9 million in annual rentals were renewed for approximately \$2.9 million. Such renewals are generally for a term of 10 years. Three properties with annual rentals of approximately \$0.2 million have not been renewed. The status of five properties with annual rentals of approximately \$0.5 million has not yet been determined.

#### **Preferred Unit Distributions**

No cash distributions on our depositary units are expected to be made in 2005. 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 operations, repayment of maturing indebtedness, tenant requirements, investments, acquisitions and other capital expenditures.

On March 31, 2004, we distributed to holders of record of our preferred units as of March 12, 2004, 489,657 additional preferred units. Pursuant to the terms of the preferred units, on March 4, 2005, we declared our scheduled annual preferred unit distribution payable in additional preferred units at the rate of 5% of the liquidation preference of \$10.00. The distribution is payable on March 31, 2005 to holders of record as of March 15, 2005. In March 2005, the number of authorized preferred units was increased to 10,900,000.

Our preferred units are subject to redemption at our option on any payment date, and the preferred units must be redeemed by us on or before March 31, 2010. The redemption price is payable,



at our option, subject to the indenture, either all in cash or by the issuance of depositary units, in either case, in an amount equal to the liquidation preference of the preferred units plus any accrued but unpaid distributions thereon.

### **Cash and Cash Equivalents**

Our cash and cash equivalents and investment in U.S. government and agency obligations increased by \$316.0 million during the year ended December 31, 2004 primarily due to proceeds from the issuance of our 8<sup>1</sup>/<sub>8</sub>% senior notes due 2012 and ACEP's 7.85% senior secured notes due 2012 in the aggregate (\$565.4 million), property sales proceeds (\$151.6 million), proceeds from the sale of marketable equity in the aggregate and debt securities (\$90.6 million), repayment of mezzanine loans (\$49.1 million), cash provided by operations (\$51.4 million), guaranteed payment from NEG Holding (\$16.0 million), and proceeds from mortgages payable (\$10.0 million) partially offset by the purchase of debt securities (\$245.2 million), purchase of the Arizona Charlies' (\$125.9 million), the Grand Harbor and Oak Harbor acquisition (\$78.6 million), purchase of debt securities of affiliates (\$65.5 million), purchase of Atlantic Holdings debt (\$36 million), repayment of affiliate debt (\$25.0 million), capital expenditures (\$16.2 million), rental real estate acquisitions (\$14.6 million), and other (\$11.0 million).

Of our cash and cash equivalents at December 31, 2004, approximately \$75.2 million is at ACEP. The terms of ACEP's 7.85% senior secured notes and its revolving credit facility restrict dividends and distributions to us, as well as redemptions of equity interests and other transactions that would make the cash available to AREP and its other subsidiaries.

We received net proceeds of approximately \$474 million from the issuance, in February 2005, of our 7<sup>1</sup>/<sub>8</sub>% senior notes due 2013. Our cash will be used to fund the \$180 million acquisition of TransTexas, and 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 businesses.

### **Acquisitions**

During December 2004, we acquired the following:

- \$27.5 million aggregate principal amount of the TransTexas Notes for \$28.2 million in cash, which included \$0.7 million of accrued interest through December 6, 2004;
- All of the membership interests of Mid River, the assets of which consist of \$38.0 million principal amount of Panaco Debt, and \$0.1 million of accrued interest, through December 6, 2004, for \$38.1 million in cash; and
- \$37.0 million principal amount of Atlantic Holdings Notes for \$36.0 million in cash.

On May 26, 2004, ACEP acquired two Las Vegas hotels and casinos, Arizona Charlie's Decatur and Arizona Charlie's Boulder, from Mr. Icahn and an entity affiliated with Mr. Icahn, for aggregate consideration of \$125.9 million. At the closing of those acquisitions, AREH transferred 100% of the common stock of Stratosphere to ACEP. As a result, ACEP owns and operates three gaming and entertainment properties in the Las Vegas metropolitan area.

In October 2003, pursuant to a purchase agreement dated as of May 16, 2003, we acquired all of the debt and 50% of the equity securities of 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.

In July 2004, we acquired Grand Harbor and Oak Harbor, two waterfront communities in Vero Beach, Florida. The communities include three golf courses, a tennis complex, fitness center, beach club and an assisted living facility. In addition, we acquired approximately 400 acres of land to the north of Grand Harbor which currently has entitlements to build approximately 600 homes and an 18 hole golf course. The total purchase price was approximately \$75.0 million.

In January 2004, we purchased a 34,422 square foot commercial condominium unit in New York City for approximately \$14.5 million.

On April 6, 2005, we acquired 100% of the equity of TransTexas, an oil and gas exploration and production company, for a purchase price of \$180.0 million.

#### **Off-Balance Sheet Arrangements**

We do not have any off-balance sheet arrangements.

#### **Critical Accounting Policies and Estimates**

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles, or GAAP. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses and the disclosure of contingent assets and liabilities. Among others, estimates are used when accounting for valuation of investments, recognition of casino revenues and promotional allowances and estimated costs to complete its land, house and condominium developments. Estimates and assumptions are evaluated on an ongoing basis and are based on historical and other factors believed to be reasonable under the circumstances. The results of these estimates may form the basis of the carrying value of certain assets and liabilities and may not be readily apparent from other sources. Actual results, under conditions and circumstances different from those assumed, may differ from estimates.

We accounted for our acquisitions of NEG and the Arizona Charlie's hotels and casinos as assets transferred between entities under common control which requires that they be accounted for at historical costs similar to a pooling of interests. NEG's investment in NEG Holding constitutes a variable interest entity. In accordance with GAAP, we have determined that NEG is not the primary beneficiary of NEG Holding and therefore we do not consolidate NEG Holding in our consolidated financial statements.

We believe the following accounting policies are critical to our business operations and the understanding of results of operations and affect the more significant judgments and estimates used in the preparation of our consolidated financial statements.

##### ***Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of***

Long-lived assets held and used by us and long-lived assets to be disposed of, are reviewed for impairment whenever events or changes in circumstances, such as vacancies and rejected leases, indicate that the carrying amount of an asset may not be recoverable.

In performing the review for recoverability, we estimate the future cash flows expected to result from the use of the asset and its eventual disposition. If the sum of the expected future cash flows, undiscounted and without interest charges, is less than the carrying amount of the asset an impairment loss is recognized. Measurement of an impairment loss for long-lived assets that we expect to hold and use is based on the fair value of the asset. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value less cost to sell.

##### ***Commitments and Contingencies—Litigation***

On an ongoing basis, we assess the potential liabilities related to any lawsuits or claims brought against us. While it is typically very difficult to determine the timing and ultimate outcome of such actions, we use our best judgment to determine if it is probable that we will incur an expense related to the settlement or final adjudication of such matters and whether a reasonable estimation of such probable loss, if any, can be made. In assessing probable losses, we make estimates of the amount of insurance recoveries, if any. We accrue a liability when we believe a loss is probable and the amount of loss can be reasonably estimated. Due to the inherent uncertainties related to the eventual outcome of litigation and potential insurance recovery, it is possible that certain matters may be resolved for amounts materially different from any provisions or disclosures that we have previously made.

### **Marketable Equity and Debt Securities and Investment in U.S. Government and Agency Obligations**

Investments in equity and debt securities are classified as either held-to-maturity or available for sale for accounting purposes. Investment in U.S. government and agency obligations are classified as available for sale. Available for sale securities are carried at fair value on our balance sheet. Unrealized holding gains and losses are excluded from earnings and reported as a separate component of partners' equity. Held-to-maturity securities are recorded at amortized cost.

A decline in the market value of any held-to-maturity security below cost that is deemed to be other than temporary results in a reduction in carrying amount to fair value. The impairment is charged to earnings and a new cost basis for the security is established. Dividend income is recorded when declared and interest income is recognized when earned.

### **Mortgages and Notes Receivable**

We have generally not recognized any profit in connection with the property sales in which certain purchase money mortgages receivable were taken back. Such profits are being deferred and will be recognized when the principal balances on the purchase money mortgages are received.

We engage in real estate lending, including making second mortgage or secured mezzanine loans to developers for the purpose of developing single-family homes, luxury garden apartments or commercial properties. These loans are subordinate to construction financing and we target an interest rate in excess of 20% per annum. However interest is not paid periodically and is due at maturity or earlier from unit sales or refinancing proceeds. We defer recognition of interest income on mezzanine loans pending receipt of principal and interest payments.

### **Revenue Recognition**

Revenue from real estate sales and related costs are recognized at the time of closing primarily by specific identification. We follow the guidelines for profit recognition set forth by Financial Accounting Standards Board (FASB) Statement No. 66, Accounting for Sales of Real Estate.

### **Casino Revenues and Promotional Allowances**

We recognize revenues in accordance with industry practice. Casino revenue is recorded as the net win from gaming activities, the difference between gaming wins and losses. Casino revenues are net of accruals for anticipated payouts of progressive and certain other slot machine jackpots. Revenues include the retail value of rooms, food and beverage and other items that are provided to customers on a complimentary basis. A corresponding amount is deducted as promotional allowances. The cost of such complimentaries is included in "Hotel and casino operating expenses." We also reward customers, through the use of loyalty programs, with points based on amounts wagered, that can be redeemed for a specified period of time for cash. We deduct the cash incentive amounts from casino revenue.

### **Income Taxes**

No provision has been made for federal, state or local income taxes on the results of operations generated by partnership activities as such taxes are the responsibility of the partners. Stratosphere Corporation and National Energy Group, Inc., our corporate subsidiaries, account for their income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards.

Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

Management periodically evaluates all evidence, both positive and negative, in determining whether a valuation allowance to reduce the carrying value of deferred tax assets is still needed. In 2004 and 2003, we concluded, based on the projected allocations of taxable income, that our corporate subsidiaries, NEG and Stratosphere, more likely than not will realize a partial benefit from their deferred tax assets and loss carryforwards. Ultimate realization of the deferred tax asset is dependent

upon, among other factors, our corporate subsidiaries' ability to generate sufficient taxable income within the carryforward periods and is subject to change depending on the tax laws in effect in the years in which the carryforwards are used.

### *Properties*

Properties held for investment, other than those accounted for under the financing method, are carried at cost less accumulated depreciation unless declines in the value of the properties are considered other than temporary at which time the property is written down to net realizable value. Properties held for sale are carried at the lower of cost or net realizable value. Such properties are no longer depreciated and their operations are included in discontinued operations. A property is classified as held for sale at the time we determine that the criteria in SFAS 144 have been met.

### **Trends and Other Uncertainties**

#### *General*

*Certain of our management are committed to the management of other businesses.*

Certain of the individuals who conduct the affairs of API, including our chairman, Carl C. Icahn, and our president and chief executive officer, Keith A. Meister, are and will in the future be committed to the management of other businesses owned or controlled by Mr. Icahn and his affiliates. Accordingly, these individuals will not be devoting all of their professional time to the management of us, 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 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 86.5% 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, is the sponsor of several pension plans which are underfunded by a total of approximately \$33.0 million on an ongoing actuarial basis and \$149.0 million if those plans were terminated, as most recently reported 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 \$250.0 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 regulation under the Investment Company Act, 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 and would reduce our funds available to make interest and principal payments on the notes.

### ***Real Estate Operations***

*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 negatively impact 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 other purposes.*

We are currently marketing for sale our rental real estate portfolio. As of December 31, 2004, we owned 71 rental real estate properties with a book value of approximately \$196.3 million, individually encumbered by mortgage debt which aggregated approximately \$91.9 million. As of December 31, 2004, we had entered into conditional sales contracts or letters of intent for 15 rental real estate properties. Selling prices for the properties covered by the contracts or letters of intent would total approximately \$97.9 million. These properties are encumbered by mortgage debt of approximately \$36.0 million. Generally, these contracts and letters of intent may be terminated by the buyer with little or no penalty. We may not be successful in obtaining purchase offers for our remaining properties at acceptable prices and sales may not be consummated. 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. From January 1, 2005 through March 31, 2005, we sold four rental real estate properties and a golf resort for approximately \$51.9 million. These properties were encumbered by approximately \$10.7 million of mortgage debt.

*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 are currently in settlement discussions with the commission but these discussions may not be successful. We cannot predict the effect on our development of the property if we are unable to settle with the commission, 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 as an owner or operator of development and rental real estate.*

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, in or from 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. In addition, we have entered in an agreement to acquire shares of GB Holdings that together with shares we currently own, will result in our owning approximately 77.5% of the common stock to GB Holdings and warrants to purchase, upon the occurrence of certain events, 21.3% of the fully diluted of its subsidiary, Atlantic Holdings, which owns and operates The Sands Hotel and Casino. Various regulatory authorities, including the Nevada State Gaming Control Board, Nevada Gaming Commission and the New Jersey Casino Control Commission, require our properties and The Sands Hotel and Casino 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 current or proposed 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. If our alcohol licenses become in any way impaired, it would reduce the number of visitors. Any reduction in our number of visitors will reduce our revenue and cash flow.

*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 Nevada 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;
- 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; and
- 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 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 revenues may decrease while some of our costs remain fixed, resulting in decreased earnings, 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.

*Our hotels and casinos may need to increase capital expenditures to compete effectively.*

Capital expenditures, such as room refurbishments, amenity upgrades and new gaming equipment, may be necessary from time to time to preserve the competitiveness of our hotels and casinos. The gaming industry market is very competitive and is expected to become more competitive in the future. If cash from operations is insufficient to provide for needed levels of capital expenditures, the competitive position of our hotels and casinos could deteriorate if our hotels and casinos are unable to raise funds for such purposes.

*Increased state taxation of gaming and hospitality revenues could adversely affect our hotel and casinos' results of operations.*

The casino industry represents a significant source of tax revenues to the various jurisdictions in which casinos operate. Gaming companies are currently subject to significant state and local taxes and fees in addition to normal federal and state corporate income taxes. Future changes in state taxation of



casino gaming companies cannot be predicted and any such changes could adversely affect the operating results of our hotels and casino.

### **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 subject to environmental regulation by state and federal agencies.*

The operations that we expect to acquire are affected by extensive regulation through various federal, state and local laws and regulations relating to the exploration for and development, production, gathering and marketing of oil and gas. Matters subject to regulation include discharge permits for drilling operations, drilling and abandonment bonds or other financial responsibility requirements, reports concerning operations, the spacing of wells, unitization and pooling of properties, and taxation. From time to time, regulatory agencies have imposed price controls and limitations on production by restricting the rate of flow of oil and gas wells below actual production capacity in order to conserve supplies of oil and gas.

The operations that we expect to acquire are also subject to numerous environmental laws, including but not limited to, those governing management of waste, protection of water, air quality, the discharge of materials into the environment, and preservation of natural resources. Non-compliance with environmental laws and the discharge of oil, natural gas, or other materials into the air, soil or water may give rise to liabilities to the government and third parties, including civil and criminal penalties, and may require us to incur costs to remedy the discharge. Oil and gas may be discharged in many ways, including from a well or drilling equipment at a drill site, leakage from pipelines or other gathering and transportation facilities, leakage from storage tanks, and sudden discharges from oil and gas wells or explosion at processing plants. Hydrocarbons tend to degrade slowly in soil and water, which makes remediation costly, and discharged hydrocarbons may migrate through soil and water supplies or adjoining property, giving rise to additional liabilities. Laws and regulations protecting the environment have become more stringent in recent years, and may in certain circumstances impose retroactive, strict, and joint and several liabilities rendering entities liable for environmental damage without regard to negligence or fault. In the past, we have agreed to indemnify sellers of producing properties against certain liabilities for environmental claims associated with those properties. We cannot assure you that new laws or regulations, or modifications of or new interpretations of existing laws and regulations, will not substantially increase the cost of compliance or otherwise adversely affect our oil and gas operations and financial condition or that material indemnity claims will not arise with respect to properties that we acquire. While we do not anticipate incurring material costs in connection with environmental compliance and remediation, we cannot guarantee that material costs will not be incurred.

The operations that we expect to acquire depend upon financing or acquiring additional reserves.

*We may experience difficulty finding and acquiring additional reserves and may be unable to compensate for the depletion of proved reserves.*

The future success and growth of the operations that we expect to acquire depend upon the ability to find or acquire additional oil and gas reserves that are economically recoverable. Except to the extent that we conduct successful exploration or development activities or acquire properties containing

proved reserves, our proved reserves will generally decline as they are produced. The decline rate varies depending upon reservoir characteristics and other factors. Future oil and gas reserves and production, and, therefore, cash flow and income will be highly dependent upon the level of success in exploiting current reserves and acquiring or finding additional reserves. The business of exploring for, developing or acquiring reserves is capital intensive. To the extent cash flow from operations is reduced and external sources of capital become limited or unavailable, the ability to make the necessary capital investments to maintain or expand this asset base of oil and gas reserves could be impaired. Development projects and acquisition activities may not result in additional reserves. We may not have success drilling productive wells at economic returns sufficient to replace our current and future production. We may acquire reserves which contain undetected problems or issues that did not initially appear to be significant to us.

*Difficulties in exploration and development could adversely affect our financial condition.*

The costs of drilling all types of wells are uncertain, as are the quantity of reserves to be found, the prices that NEG Holding, TransTexas or Panaco will receive for the oil or natural gas, and the costs to operate the well. While each has successfully drilled wells, you should know that there are inherent risks in doing so, and, if we complete the acquisitions, those difficulties could materially affect our financial condition and results of operations. Also, just because we complete a well and begin producing oil or natural gas, we cannot assure you that we will recover our investment or make a profit.

*Oil and gas prices are likely to be volatile.*

The revenues, profitability and the carrying value of oil and gas properties that we have agreed to acquire are substantially dependent upon prevailing prices of, and demand for, oil and gas and the costs of acquiring, finding, developing and producing reserves. Historically, the markets for oil and gas have been volatile. Markets for oil and gas likely will continue to be volatile in the future. Prices for oil and gas are subject to wide fluctuations in response to: (1) relatively minor changes in the supply of, and demand for, oil and gas; (2) market uncertainty; and (3) a variety of additional factors, all of which are beyond our control. These factors include, among others:

- domestic and foreign political conditions;
- the price and availability of domestic and imported oil and gas;
- the level of consumer and industrial demand;
- weather, domestic and foreign government relations; and
- the price and availability of alternative fuels and overall economic conditions.

The production of each of NEG Holding, TransTexas and Panaco is weighted toward natural gas, making earnings and cash flow more sensitive to natural gas price fluctuations.

*Operating hazards and uninsured risks are inherent to the oil and gas industry.*

The oil and gas business involves a variety of operating risks, including, but not limited to, unexpected formations or pressures, uncontrollable flows of oil, natural gas, brine or well fluids into the environment (including groundwater contamination), blowouts, fires, explosions, pollution and other risks, any of which could result in personal injuries, loss of life, damage to properties and substantial losses. Although NEG Holding, TransTexas and Panaco carry insurance at levels we believe are reasonable, they are not fully insured against all risks. Losses and liabilities arising from uninsured or under-insured events could have a material adverse effect on their and our financial condition and operations.

*Our use of hedging arrangements could adversely affect our results of operations.*

NEG Holding and TransTexas typically hedge a portion of oil and gas production during periods when market prices for products are higher than historical average prices. During 2004, NEG Holding and TransTexas hedged 61% and 57%, respectively, of annual natural gas production and hedged 96% and 81%, respectively, of annual oil production.

Typically, NEG Holding, TransTexas and Panaco have used swaps, cost-free collars and options to put products to a purchaser at a specified price, or floor. In these transactions, NEG Holding, TransTexas and Panaco will usually have the option to receive from the counterparty to the hedge a

specified price or the excess of a specified price over a floating market price. If the floating price exceeds the fixed price, the hedging party is required to pay the counterparty all or a portion of this difference multiplied by the quantity hedged.

*The oil and gas industry is highly competitive.*

There are many companies and individuals engaged in the exploration for and development of oil and gas properties. Competition is particularly intense with respect to the acquisition of oil and gas producing properties and securing experienced personnel. We encounter competition from various oil and gas companies in raising capital and in acquiring producing properties. Many of our competitors have financial and other resources considerably larger than ours.

### **Investments**

*We may not be able to identify suitable investments, and our investments may not result in favorable returns or may result in losses.*

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.

### **Item 7A. 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 our operating and investment activities, we are exposed to market, credit and related risks, including those described elsewhere herein. 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.

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. Other operating risks for us 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. Our mortgages payable are primarily fixed-rate debt and, therefore, are not subject to market risk.

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 December 31, 2004, would decline by approximately \$200,000.

At December 31, 2004, we had a short position with respect to 2.5 million shares of common stock of a company in bankruptcy. If the price of the common stock increased by 10% from the price at that date, we would have incurred an additional loss of approximately \$10.0 million with respect to that position.

Whenever practical, we employ internal strategies to mitigate exposure to these and other risks. We perform, on a case by case basis with respect to new investments, internal analyses of risk identification, assessment and control. We review credit exposures, and seek 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.

QuickLinks

[EXHIBIT 99.2](#)

**Item 8. Financial Statements and Supplementary Data**

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Partners of  
American Real Estate Partners, L.P.

We have audited the accompanying consolidated balance sheet of American Real Estate Partners, L.P. and Subsidiaries as of December 31, 2004, and the related consolidated statements of earnings, changes in partners' equity and comprehensive income, and cash flows for the year then ended. These consolidated financial statements are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of American Real Estate Partners, L.P. and Subsidiaries as of December 31, 2004, and the results of their operations and their cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Our audit was conducted for the purpose of forming an opinion on the basic financial statements taken as a whole. The financial statement schedule listed in the index at Item 9.01 (99.4) is presented for purposes of additional analysis and is not a required part of the basic financial statements. This schedule has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

/s/ GRANT THORNTON LLP

New York, New York  
June 2, 2005

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Partners  
American Real Estate Partners, L.P.:

We have audited the accompanying consolidated balance sheet of American Real Estate Partners, L.P. and subsidiaries as of December 31, 2003, and the related consolidated statements of earnings, changes in partners' equity and comprehensive income, and cash flows for each of the years in the two-year period ended December 31, 2003. In connection with our audits of the consolidated financial statements, we have also audited the financial statement schedule III for the years ended December 31, 2003 and 2002. These consolidated financial statements and the financial statement schedule are the responsibility of the Partnership's management. Our responsibility is to express an opinion on these consolidated financial statements and the financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of American Real Estate Partners, L.P. and subsidiaries as of December 31, 2003, and the results of their operations and their cash flows for each of the years in the two-year period ended December 31, 2003, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

/s/ KPMG LLP

New York, New York  
September 5, 2004

**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

**DECEMBER 31, 2004 AND 2003**

|   | December 31,                         |                     |
|---|--------------------------------------|---------------------|
|   | 2004                                 | 2003                |
|   | (in \$000's except per unit amounts) |                     |
| <b>ASSETS</b>   |                                      |                     |
| <b>Current Assets:</b>  |                                      |                     |
| Cash and cash equivalents (Note 2)  | \$ 762,708                           | \$ 487,498          |
| Investment in U.S. government and agency obligations (Note 4)   | 96,840                               | 52,583              |
| Marketable equity and debt securities (Note 5)  | 2,248                                | 55,826              |
| Due from brokers (Note 6)   | 123,001                              | —                   |
| Restricted cash   | 19,856                               | 15,058              |
| Receivables and other current assets  | 51,575                               | 43,420              |
| Real estate leased to others:   |                                      |                     |
| Current portion of lease amortization for leases accounted for under the financing method (Note 8)  | 3,912                                | 5,738               |
| Properties held for sale (Notes 9 and 15)   | 58,021                               | 128,813             |
| Current portion of investment in debt securities of affiliates (Note 12)  | 10,429                               | —                   |
| Current portion of deferred tax asset (Note 23)   | 2,685                                | 2,982               |
|   | <hr/>                                | <hr/>               |
| Total current assets  | 1,131,275                            | 791,918             |
| Investment in U.S. government and agency obligations (Note 4)   | 5,491                                | 8,990               |
| Other investments (Note 7)  | 245,948                              | 50,328              |
| Land and construction-in-progress (Note 15)   | 106,537                              | 43,459              |
| Real estate leased to others:   |                                      |                     |
| Accounted for under the financing method (Notes 8, 15 and 16)   | 85,281                               | 131,618             |
| Accounted for under the operating method, net of accumulated depreciation (Notes 9, 15 and 16)  | 49,118                               | 76,443              |
| Hotel, casino and resort operating properties, net of accumulated depreciation:   |                                      |                     |
| American Casino & Entertainment Properties LLC (Notes 10 and 17)  | 289,360                              | 298,703             |
| Hotel and resorts (Notes 9 and 11)  | 50,132                               | 41,526              |
| Deferred finance costs and other assets, net  | 21,038                               | 3,833               |
| Long-term portion of investment in debt securities of affiliates (Note 12)  | 115,075                              | 24,696              |
| Investment in NEG Holding LLC (Note 14)   | 87,800                               | 69,346              |
| Equity interest in GB Holdings, Inc. (The Sands Hotel and Casino)(Note 13)  | 10,603                               | 30,854              |
| Deferred tax asset (Note 23)  | 65,399                               | 74,892              |
|   | <hr/>                                | <hr/>               |
| <b>Total</b>  | <b>\$ 2,263,057</b>                  | <b>\$ 1,646,606</b> |
| <b>LIABILITIES AND PARTNERS' EQUITY</b>   |                                      |                     |
| <b>Current Liabilities:</b>   |                                      |                     |
| Current portion of mortgages payable (Notes 8, 9 and 16)  | \$ 3,700                             | \$ 4,892            |
| Mortgages on properties held for sale (Notes 9 and 16)  | 27,477                               | 82,861              |
| Accounts payable, accrued expenses and other current liabilities (Note 20)  | 81,793                               | 45,774              |
| Securities sold not yet purchased (Note 6)  | 90,674                               | —                   |
| Credit facility due affiliates (Notes 14 and 17)  | —                                    | 25,000              |
|   | <hr/>                                | <hr/>               |
| Total current liabilities   | 203,644                              | 158,527             |
| Other liabilities   | 23,239                               | 22,980              |
| Long-term portion of mortgages payable (Notes 8, 9 and 16)  | 60,719                               | 93,236              |
| Senior secured notes payable (Note 18)  | 215,000                              | —                   |
| Senior unsecured notes payable-net of unamortized discount of \$2,402 (Note 19)   | 350,598                              | —                   |
| Preferred limited partnership units:  |                                      |                     |
| \$10 liquidation preference, 5% cumulative pay-in-kind; 10,400,000 authorized; 10,286,264 and 9,796,607 issued and outstanding as of December 31, 2004 and 2003 (Note 24) | 106,731                              | 101,649             |
|   | <hr/>                                | <hr/>               |
| Total long-term liabilities   | 756,287                              | 217,865             |
| Commitments and contingencies (Notes 3 and 24):   |                                      |                     |
| Partners' Equity:   |                                      |                     |
| Limited partners  |                                      |                     |
| Depository units; 47,850,000 authorized; 47,235,484 outstanding   | 1,328,031                            | 1,184,870           |
| General partner   | (12,984)                             | 97,265              |
| Treasury units at cost:   |                                      |                     |
| 1,137,200 depository units (Note 28)  | (11,921)                             | (11,921)            |
|   | <hr/>                                | <hr/>               |
| Partners' equity (Notes 2 and 3)  | 1,303,126                            | 1,270,214           |
|   | <hr/>                                | <hr/>               |
| <b>Total</b>  | <b>\$ 2,263,057</b>                  | <b>\$ 1,646,606</b> |

See notes to consolidated financial statements.





**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF EARNINGS**

**YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**

|   | Years Ended December 31,                      |                  |                  |
|---|---|------------------|------------------|
|   | 2004  | 2003             | 2002             |
|   | (in \$000's except unit and per unit amounts) |                  |                  |
| <b>Revenues:</b>  |   |                  |                  |
| Hotel and casino operating income (Note 10)   | \$ 299,981                                    | \$ 262,811       | \$ 250,023       |
| Land, house and condominium sales   | 26,591  | 13,265           | 76,024           |
| Interest income on financing leases   | 9,880   | 13,115           | 14,722           |
| Interest income on U.S. Government and Agency obligations and other investments (Notes 2 and 7) | 44,418  | 22,583           | 30,569           |
| Rental income   | 7,916   | 7,092            | 6,852            |
| Hotel and resort operating income (Note 11)   | 16,211  | 12,376           | 12,921           |
| Accretion of investment in NEG Holding LLC (Note 14)  | 34,432  | 30,142           | 32,879           |
| NEG management fee  | 11,563  | 7,967            | 7,637            |
| Dividend and other income (Notes 5 and 7)   | 3,133   | 3,061            | 2,720            |
| Equity in (loss) earnings of GB Holdings, Inc. (Note 13)  | (2,113)                                       | (3,466)          | 305              |
|   | <u>452,012</u>                                | <u>368,946</u>   | <u>434,652</u>   |
| <b>Expenses:</b>  |   |                  |                  |
| Hotel and casino operating expenses (Note 10)   | 227,603                                       | 216,857          | 217,938          |
| Cost of land, house and condominium sales   | 18,486  | 9,129            | 54,640           |
| Hotel and resort operating expenses (Note 11)   | 12,730  | 8,773            | 10,536           |
| Interest expense (Notes 15, 16, 17, 18, 19 and 22)  | 46,099  | 21,103           | 27,297           |
| Depreciation and amortization   | 29,815  | 24,802           | 23,646           |
| General and administrative expenses (Note 3)  | 20,952  | 14,081           | 14,134           |
| Property expenses   | 4,340   | 4,472            | 3,862            |
| Provision for losses on real estate   | 3,150   | 750              | 3,212            |
|   | <u>363,175</u>                                | <u>299,967</u>   | <u>355,265</u>   |
| Operating income  | 88,837  | 68,979           | 79,387           |
| <b>Other gains and (losses):</b>  |   |                  |                  |
| (Loss) on sale of other assets  | —   | (1,503)          | (353)            |
| Gain on sale of marketable equity and debt securities   | 40,159  | 2,607            | —                |
| Unrealized losses on securities sold short (Note 6)   | (23,619)                                      | —                | —                |
| Impairment loss on equity interest in GB Holdings, Inc. (Note 13)                               | (15,600)                                      | —                | —                |
| Write-down of marketable equity and debt securities and other investments (Note 5)              | —   | (19,759)         | (8,476)          |
| Gain on sales and disposition of real estate (Note 15)  | 5,262   | 7,121            | 8,990            |
| Loss on limited partnership interests   | —   | —                | (3,750)          |
| Minority interest in net earnings of Stratosphere Corporation (Note 10)                         | —   | —                | (1,943)          |
|   | <u>95,039</u>                                 | <u>57,445</u>    | <u>73,855</u>    |
| Income from continuing operations before income taxes   | 95,039  | 57,445           | 73,855           |
| Income tax (expense) benefit (Note 23)  | (16,763)                                      | 1,573            | (10,096)         |
|   | <u>78,276</u>                                 | <u>59,018</u>    | <u>63,759</u>    |
| <b>Discontinued operations:</b>   |   |                  |                  |
| Income from discontinued operations   | 7,500   | 7,653            | 6,937            |
| Gain on sales and disposition of real estate  | 75,197  | 3,353            | —                |
|   | <u>82,697</u>                                 | <u>11,006</u>    | <u>6,937</u>     |
| <b>Total income from discontinued operations</b>  | <b>82,697</b>                                 | <b>11,006</b>    | <b>6,937</b>     |
| Net earnings  | \$ 160,973                                    | \$ 70,024        | \$ 70,696        |
| <b>Net earnings attributable to (Note 1):</b>   |   |                  |                  |
| Limited partners  | \$ 152,507                                    | \$ 59,360        | \$ 63,168        |
| General partner   | 8,466   | 10,664           | 7,528            |
|   | <u>\$ 160,973</u>                             | <u>\$ 70,024</u> | <u>\$ 70,696</u> |
| <b>Net earnings per limited partnership unit (Notes 2 and 21):</b>                              |   |                  |                  |
| <b>Basic earnings:</b>  |   |                  |                  |
| Income from continuing operations   | \$ 1.55                                       | \$ 1.00          | \$ 1.12          |
| Income from discontinued operations   | 1.76  | 0.24             | 0.15             |
|   | <u>\$ 3.31</u>                                | <u>\$ 1.24</u>   | <u>\$ 1.27</u>   |
| <b>Basic earnings per LP unit</b>   | <b>\$ 3.31</b>                                | <b>\$ 1.24</b>   | <b>\$ 1.27</b>   |
| Weighted average limited partnership units outstanding  | 46,098,284                                    | 46,098,284       | 46,098,284       |
| <b>Diluted earnings:</b>  |   |                  |                  |

|   |    |                   |    |                   |    |                   |
|---|----|-------------------|----|-------------------|----|-------------------|
| Income from continuing operations   | \$ | 1.48              | \$ | 0.94              | \$ | 1.00              |
| Income from discontinued operations   |    | 1.57              |    | 0.19              |    | 0.12              |
|   |    | <u>          </u> |    | <u>          </u> |    | <u>          </u> |
| Diluted earnings per LP unit  | \$ | 3.05              | \$ | 1.13              | \$ | 1.12              |
|   |    | <u>          </u> |    | <u>          </u> |    | <u>          </u> |
| Weighted average limited partnership units and equivalent partnership units outstanding |    | 51,542,312        |    | 54,489,943        |    | 56,466,698        |
|   |    | <u>          </u> |    | <u>          </u> |    | <u>          </u> |

See notes to consolidated financial statements.

**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CHANGES IN PARTNERS'  
EQUITY AND COMPREHENSIVE INCOME**

**YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**  
(in \$000's)

|   | General<br>Partner's<br>Equity<br>(Deficit) | Limited Partners' Equity |                 | Held in Treasury |       | Total<br>Partners'<br>Equity |
|---|---|--------------------------|-----------------|------------------|-------|------------------------------|
|   |   | Depository Units         | Preferred Units | Amounts          | Units |                              |
| Balance, December 31, 2001  | \$ 58,846                                   | \$ 996,701               | \$ 92,198       | \$ (11,921)      | 1,137 | 1,135,824                    |
| Comprehensive income:   |   |                          |                 |                  |       |                              |
| Net earnings  | 7,528                                       | 63,168                   | —               | —                | —     | 70,696                       |
| Reclassification of unrealized loss on sale of debt securities  | 211   | 10,384                   | —               | —                | —     | 10,595                       |
| Adjustment to reverse unrealized loss on investment securities reclassified to notes receivable                           | 131   | 6,451                    | —               | —                | —     | 6,582                        |
| Net unrealized losses on securities available for sale  | (5)   | (237)                    | —               | —                | —     | (242)                        |
| Comprehensive income  | 7,865                                       | 79,766                   | —               | —                | —     | 87,631                       |
| Net adjustment for acquisition of minority interest (Note 10)   | 21,151                                      | —                        | —               | —                | —     | 21,151                       |
| Pay-in-kind distribution (Note 22)  | —   | (4,610)                  | 4,610           | —                | —     | —                            |
| Capital contribution to American Casino (Note 10)   | 831   | —                        | —               | —                | —     | 831                          |
| Balance, December 31, 2002  | 88,693                                      | 1,071,857                | 96,808          | (11,921)         | 1,137 | 1,245,437                    |
| Comprehensive income:   |   |                          |                 |                  |       |                              |
| Net earnings  | 10,664                                      | 59,360                   | —               | —                | —     | 70,024                       |
| Reclassification of unrealized loss on sale of debt securities  | 15  | 746                      | —               | —                | —     | 761                          |
| Net unrealized gains on securities available for sale   | 183   | 8,991                    | —               | —                | —     | 9,174                        |
| Sale of marketable equity securities available for sale   | (6)   | (274)                    | —               | —                | —     | (280)                        |
| Comprehensive income  | 10,856                                      | 68,823                   | —               | —                | —     | 79,679                       |
| Pay-in-kind distribution (Note 22)  | —   | (2,391)                  | 2,391           | —                | —     | —                            |
| Change in deferred tax asset valuation allowance related to book-tax differences existing at time of bankruptcy (Note 23) | 524   | 46,581                   | —               | —                | —     | 47,105                       |
| Capital distribution (Note 10)  | (2,808)                                     | —                        | —               | —                | —     | (2,808)                      |
| Reclassification of Preferred LP units to liabilities (Note 22)   | —   | —                        | (99,199)        | —                | —     | (99,199)                     |
| Balance, December 31, 2003  | 97,265                                      | 1,184,870                | —               | (11,921)         | 1,137 | 1,270,214                    |
| Comprehensive income:   |   |                          |                 |                  |       |                              |
| Net earnings  | 8,466                                       | 152,507                  | —               | —                | —     | 160,973                      |
| Reclassification of unrealized gains on marketable securities sold  | (190)                                       | (9,378)                  | —               | —                | —     | (9,568)                      |
| Net unrealized gains on securities available for sale   | 1   | 32                       | —               | —                | —     | 33                           |
| Comprehensive income  | 8,277                                       | 143,161                  | —               | —                | —     | 151,438                      |
| Capital distribution from American Casino (Note 10)   | (17,916)                                    | —                        | —               | —                | —     | (17,916)                     |
| Capital contribution to American Casino (Note 10)   | 22,800                                      | —                        | —               | —                | —     | 22,800                       |
| Arizona Charlie's acquisition (Note 10)   | (125,900)                                   | —                        | —               | —                | —     | (125,900)                    |
| Change in deferred tax asset related to acquisition of Arizona Charlie's  | 2,490                                       | —                        | —               | —                | —     | 2,490                        |
| Balance, December 31, 2004  | \$ (12,984)                                 | \$ 1,328,031             | \$ —            | \$ (11,921)      | 1,137 | \$ 1,303,126                 |

Accumulated other comprehensive income (loss) at December 31, 2004, 2003 and 2002 was \$(122), \$9,413 and (\$242), respectively.

See notes to consolidated financial statements.

**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS  
YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002**

|  | Years Ended December 31, |                |                  |
|--|--------------------------|----------------|------------------|
|  | 2004                     | 2003           | 2002             |
|  | (in \$000's)             |                |                  |
| <b>Cash flows from operating activities:</b>   |                          |                |                  |
| Income from continuing operations  | \$ 78,276                | \$ 59,018      | \$ 63,759        |
| <b>Adjustments to reconcile net earnings to net cash provided by operating activities:</b> |                          |                |                  |
| Depreciation and amortization  | 29,815                   | 24,802         | 23,646           |
| Preferred LP interest expense  | 5,082                    | 2,450          | —                |
| Gain on sale of marketable equity securities   | (40,159)                 | (2,607)        | —                |
| Unrealized losses on securities sold short   | 23,619                   | —              | —                |
| Impairment loss on equity interest in GB Holdings, Inc.                                    | 15,600                   | —              | —                |
| Gain on sales and disposition of real estate   | (5,262)                  | (7,121)        | (8,990)          |
| Loss on limited partnership interests  | —                        | —              | 3,750            |
| Loss on sale of assets   | 96                       | 1,503          | 353              |
| Provision for loss on real estate  | 3,150                    | 750            | 3,212            |
| Write-down of marketable equity and debt securities and other investments                  | —                        | 19,759         | 8,476            |
| Minority interest in net earnings of Stratosphere Corporation                              | —                        | —              | 1,943            |
| Equity in losses (earnings) of GB Holdings, Inc.   | 2,113                    | 3,466          | (305)            |
| Deferred gain amortization   | (2,038)                  | (2,038)        | (2,038)          |
| Accretion of investment in NEG Holding LLC   | (34,432)                 | (30,142)       | (32,879)         |
| Deferred income tax expense (benefit)  | 13,946                   | (5,875)        | 9,785            |
| <b>Changes in operating assets and liabilities:</b>  |                          |                |                  |
| (Increase) decrease in receivables and other assets  | (10,234)                 | (299)          | 2,944            |
| Increase in due from brokers   | (123,001)                | —              | —                |
| Increase (decrease) in land and construction-in-progress                                   | (1,626)                  | (4,106)        | 24,215           |
| Increase in restricted cash  | (4,798)                  | (13,095)       | —                |
| Increase (decrease) in accounts payable, accrued expenses and other liabilities            | 92,476                   | (37,328)       | 271              |
| <b>Net cash provided by continuing operations</b>  | <b>42,623</b>            | <b>9,137</b>   | <b>98,142</b>    |
| Total income from discontinued operations  | 82,697                   | 11,006         | 6,937            |
| Depreciation and amortization  | 1,244                    | 5,129          | 4,464            |
| Net gain from property transactions  | (75,197)                 | (3,353)        | —                |
| <b>Net cash provided by discontinued operations</b>  | <b>8,744</b>             | <b>12,782</b>  | <b>11,401</b>    |
| <b>Net cash provided by operating activities</b>   | <b>51,367</b>            | <b>21,919</b>  | <b>109,543</b>   |
| <b>Cash flows from investing activities:</b>   |                          |                |                  |
| Increase (decrease) in other investments   | 2,942                    | (28,491)       | (23,200)         |
| Repayments of mezzanine loans included in other investments                                | 49,130                   | 12,200         | 23,000           |
| Net proceeds from the sales and disposition of real estate                                 | 16,790                   | 15,290         | 20,513           |
| Principal payments received on leases accounted for under the financing method             | 4,219                    | 5,310          | 5,941            |
| Purchase of debt securities included in other investments                                  | (245,166)                | —              | —                |
| Purchase of debt securities of affiliates  | (65,500)                 | —              | —                |
| Purchase of Atlantic Holdings debt included in debt securities due from affiliates         | (36,000)                 | —              | —                |
| Acquisition of Arizona Charlies'   | (125,900)                | —              | —                |
| Additions to hotel, casino and resort operating property                                   | (16,203)                 | (32,911)       | (21,715)         |
| Acquisition of hotel and resort operating property   | (16,463)                 | —              | —                |
| Acquisitions of rental real estate   | (14,583)                 | —              | (18,226)         |
| Acquisition of land and construction in progress   | (61,845)                 | —              | —                |
| Additions to rental real estate  | (18)                     | (413)          | (181)            |
| (Increase) decrease in investment in U.S. Government and Agency Obligations (Note 2)       | (40,757)                 | 274,478        | (22,410)         |
| Increase in marketable equity and debt securities  | —                        | (45,140)       | (4,415)          |
| Proceeds from sale of marketable equity and debt securities                                | 90,614                   | 3,843          | —                |
| Decrease in note receivable from affiliate   | —                        | 250,000        | —                |
| Decrease in minority interest in Stratosphere Corp   | —                        | —              | (44,744)         |
| Decrease in investment in Stratosphere Corp  | —                        | 788            | —                |
| Investment in NEG, Inc   | —                        | (148,101)      | —                |
| Guaranteed payment from NEG Holding LLC  | 15,979                   | 18,229         | 21,653           |
| Priority distribution from NEG Holding LLC   | —                        | 40,506         | —                |
| Decrease in due to affiliate   | —                        | —              | (68,491)         |
| Other  | (194)                    | 560            | 197              |
| <b>Net cash (used in) provided by investing activities from continuing operations</b>      | <b>(442,955)</b>         | <b>366,148</b> | <b>(132,078)</b> |

*(continued on next page)*

|   | Years Ended December 31, |                   |                  |
|---|--------------------------|-------------------|------------------|
|   | 2004                     | 2003              | 2002             |
|   | (in \$000's)             |                   |                  |
| <b>Cash flows from investing activities from discontinued operations:</b>   |                          |                   |                  |
| Net proceeds from the sales and disposition of real estate                  | 134,789                  | 5,336             | —                |
| <b>Net cash (used in) provided by investing activities</b>                  | <b>(308,166)</b>         | <b>371,484</b>    | <b>(132,078)</b> |
| <b>Cash flows from financing activities:</b>                                |                          |                   |                  |
| <b>Partners' Equity:</b>  |                          |                   |                  |
| Distributions to members  | (17,916)                 | —                 | —                |
| Member's contribution   | 22,800                   | —                 | —                |
| Contributions to American Casino  | —                        | —                 | 598              |
| <b>Debt:</b>  |                          |                   |                  |
| Repayment of credit facilities  | —                        | (2,904)           | (5,000)          |
| Proceeds from credit facility   | —                        | 7,780             | 17,220           |
| Proceeds from Senior Notes Payable  | 565,409                  | —                 | —                |
| Decrease in due to affiliates   | (24,925)                 | —                 | —                |
| Proceeds from mortgages payable   | 10,000                   | 20,000            | 12,700           |
| Payments on mortgages payable   | —                        | (3,837)           | (462)            |
| Periodic principal payments   | (5,248)                  | (6,484)           | (7,198)          |
| Debt issuance costs   | (18,111)                 | —                 | —                |
| Other   | —                        | —                 | 242              |
| <b>Net cash provided by financing activities</b>                            | <b>532,009</b>           | <b>14,555</b>     | <b>18,100</b>    |
| <b>Net increase (decrease) in cash and cash equivalents</b>                 | <b>275,210</b>           | <b>407,958</b>    | <b>(4,435)</b>   |
| Cash and cash equivalents, beginning of year                                | 487,498                  | 79,540            | 83,975           |
| <b>Cash and cash equivalents at end of year</b>                             | <b>\$ 762,708</b>        | <b>\$ 487,498</b> | <b>\$ 79,540</b> |
| <b>Supplemental information:</b>  |                          |                   |                  |
| Cash payments for interest, net of amounts capitalized                      | \$ 44,258                | \$ 65,110         | \$ 37,176        |
| <b>Supplemental schedule of noncash investing and financing activities:</b> |                          |                   |                  |
| Reclassification of real estate to operating lease                          | \$ —                     | \$ 5,065          | \$ 13,403        |
| Reclassification from hotel and resort operating properties                 | (6,428)                  | —                 | —                |
| Reclassification of real estate from financing lease                        | (1,920)                  | (5,065)           | (13,503)         |
| Reclassification of real estate from operating lease                        | (38,452)                 | (126,263)         | —                |
| Reclassification of real estate to property held for sale                   | 46,800                   | 126,263           | 100              |
| Decrease in other investments   | —                        | (3,453)           | —                |
| Decrease in deferred income   | —                        | 2,565             | —                |
| Increase in real estate accounted for under the operating method            | —                        | 888               | —                |
| Reclassification from marketable equity and debt securities                 | —                        | —                 | (20,494)         |
| Reclassification from receivable and other assets                           | —                        | (1,631)           | —                |
| Reclassification to other investments                                       | —                        | 1,631             | 20,494           |
|   | \$ —                     | \$ —              | \$ —             |
| <b>Net unrealized gains (losses) on securities available for sale</b>       | <b>\$ 33</b>             | <b>\$ 9,174</b>   | <b>\$ (242)</b>  |
| <b>Increase in equity and debt securities</b>                               | <b>\$ 1,740</b>          | <b>\$ 1,200</b>   | <b>\$ 2,890</b>  |
| Contribution of note from NEG Holding LLC                                   | \$ —                     | \$ 10,940         | \$ —             |
| <b>Change in tax asset related to acquisition</b>                           | <b>\$ 2,490</b>          | <b>\$ —</b>       | <b>\$ —</b>      |

See notes to consolidated financial statements.

## AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2004, 2003 and 2002

#### 1. Description of Business and Basis of Presentation

American Real Estate Partners, L.P. and its subsidiaries (the "Company" or "AREP") are engaged in the following operating businesses: (1) rental real estate; (2) hotel, casino and resort operations; (3) land, house and condominium development; (4) participation and management of oil and gas operating properties; and (5) investment in securities, including investment in other entities and marketable equity and debt securities.

As a result of the Company's expansion into non-real estate businesses, the Company has changed the presentation of its 2004 Consolidated Balance Sheet to a classified basis. The 2003 Consolidated Balance Sheet has been reclassified to conform to the 2004 presentation.

On July 1, 1987, American Real Estate Holdings Limited Partnership (the "Subsidiary" or "AREH"), in connection with an exchange offer (the "Exchange"), entered into merger agreements with American Real Estate Partners, L.P. and each of thirteen separate limited partnerships (collectively, the "Predecessor Partnerships"), pursuant to which the Subsidiary acquired all the assets, subject to the liabilities of the Predecessor Partnerships.

By virtue of the Exchange, the Subsidiary owns the assets, subject to the liabilities, of the Predecessor Partnerships. The Company owns a 99% limited partner interest in AREH. AREH, the operating partnership, was formed to hold the investments of and conduct the business operations of the Company. Substantially all of the assets and liabilities of the Company are owned by AREH and substantially all operations are conducted through AREH. American Property Investors, Inc. (the "General Partner") owns a 1% general partner interest in both the Subsidiary and the Company, representing an aggregate 1.99% general partner interest in the Company and the Subsidiary. The General Partner is owned and controlled by Mr. Carl C. Icahn ("Icahn" or "Mr. Icahn").

On August 16, 1996, the Company amended its Partnership Agreement to permit non-real estate related acquisitions and investments to enhance unitholder value and further diversify its assets. Under the Amendment, investments may include equity and debt securities of domestic and foreign issuers. The portion of the Company's assets invested in any one type of security or any single issuer are not limited.

The Company will conduct its activities in such a manner so as not to be deemed an investment company under the Investment Company Act of 1940 (the "1940 Act"). Generally, this means that no more than 40% of the Company's total assets will be invested in investment securities, as such term is defined in the 1940 Act. In addition, the Company does not intend to invest in securities as its primary business and will structure its investments to continue to be taxed as a partnership rather than as a corporation under the applicable publicly traded partnership rules of the Internal Revenue Code.

As of December 31, 2004, affiliates of the General Partner owned 8,900,995 Preferred Units, or 86.5%, and 39,896,836 Depositary Units or 86.5%.

#### 2. Summary of Significant Accounting Policies

*Principles of Consolidations*—The consolidated financial statements include the accounts of AREP and its majority-owned subsidiaries in which control can be exercised. The Company is considered to have control if it has a direct or indirect ability to make decisions about an entity's activities through voting or similar rights. The Company uses the guidance set forth in AICPA Statement of Position No. 78-9, *Accounting for Investments in Real Estate Ventures*, with respect to its investments in partnerships and limited liability companies. In addition, the Company uses the guidance of FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities*, or FIN 46R, whereby an interest in a variable interest entity where the Company is deemed to be the primary beneficiary would be consolidated. The Company is not deemed to be the primary beneficiary, as defined, with respect to National Energy Group, Inc.'s ("NEG") investment in NEG Holding, LLC ("Holding LLC"). The Company accounts for its residual equity investment in Holding LLC in accordance with APB 18 (See Note 14). All material intercompany balances and transactions are eliminated.

Investments in affiliated companies determined to be voting interest entities in which AREP owns between 20% and 50%, and therefore exercises significant influence, but which it does not control, are accounted for using the equity method. The Company accounts for its 36% interest in GB Holdings on the equity basis.

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.

*Net Earnings Per Limited Partnership Unit*—Basic earnings per LP Unit are based on net earnings as adjusted prior to the July 1, 2003, preferred pay-in-kind distribution to Preferred Unitholders. The resulting net earnings available for limited partners are divided by the weighted average number of depositary limited partnership units outstanding.

Diluted earnings per LP Unit uses net earnings attributable to limited partner interests, as adjusted after July 1, 2003 for the preferred pay-in-kind distributions 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 as follows: 5,444,028, 8,391,659, and 10,368,414 limited partnership units for the years ended December 31, 2004, 2003 and 2002, respectively, to reflect the effects of the dilutive preferred units.

For accounting purposes, NEG's earnings prior to the NEG acquisition in October 2003 and Arizona Charlie's earnings prior to its acquisition in May 2004 have been allocated to the General Partner and therefore excluded from the computation of basic and diluted earnings per limited partnership unit.

*Cash and Cash Equivalents*—The Company considers short-term investments, which are highly liquid with original maturities of three months or less at date of purchase, to be cash equivalents. Included in cash and cash equivalents at December 31, 2004 and 2003 are investments in government-backed securities of approximately \$658,534,000 and \$378,000,000, respectively.

*Restricted Cash*—Restricted Cash consists of funds held by third parties in connection with tax free property exchanges pursuant to Internal Revenue Code Section 1031.

*Marketable Equity and Debt Securities, Investment in U.S. Government and Agency Obligations and Other Investments*—Investments in equity and debt securities are classified as either trading, held-to-maturity or available for sale for accounting purposes. Trading securities are valued at quoted market value at each balance sheet date with the unrealized gains or losses reflected in the Consolidated Statements of Earnings. Investments in U.S. Government and Agency Obligations are classified as available for sale. Available for sale securities are carried at fair value on the balance sheet of the Company. Unrealized holding gains and losses are excluded from earnings and reported as a separate component of Partners' Equity and when sold are reclassified out of Partners' Equity based on specific identification. Held-to-maturity securities are recorded at amortized cost.

A decline in the market value of any held-to-maturity or available for sale security below cost that is deemed to be other than temporary results in a reduction in carrying amount to fair value. The impairment is charged to earnings and a new cost basis for the security is established. Dividend income is recorded when declared and interest income is recognized when earned.

*Other investments.*

a. The Company accounts for secured bank debt acquired at a discount for which the Company believes it is not probable that the undiscounted future cash collection will be sufficient to recover the face amount of the loan and constructive interest utilizing the cost recovery method in accordance with Practice Bulletin 6, "Amortization of Discounts on Certain Acquired Loans." For secured bank debt



acquired at a discount where recovery is probable, the Company amortizes the discount on the loan over the period in which the payments are probable of collection, only if the amounts are reasonably estimable and the ultimate collectibility of the acquisition amount of the loan and the discount is probable. The Company evaluates collectibility for every loan at each balance sheet date.

SOP 03-03, "Accounting for Certain Loans or Debt Securities Acquired in a Transfer," which is effective for fiscal years beginning after December 15, 2004, limits the yield that may be accreted to the excess of the Company's estimate of undiscounted cash flows expected to be collected over the Company's initial investment in a loan. The Company does not expect that the adoption of this SOP will have a significant impact on its financial statements.

b. The Company has generally not recognized any profit in connection with the property sales in which certain purchase money mortgages receivable were taken back. Such profits are being deferred and will be recognized when the principal balances on the purchase money mortgages are received.

c. The Company has provided development financing for certain real estate projects. The security for these loans is either a second mortgage or 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. Generally, interest is not paid periodically but 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 all principal payments.

*Income Taxes*—No provision has been made for federal, state or local income taxes on the results of operations generated by partnership activities, as such taxes are the responsibility of the partners. American Entertainment Properties Corp., the parent of American Casino & Entertainment Properties LLC ("American Casino"), and NEG, the Company's corporate subsidiaries, account for their income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

*Leases*—The Company leases to others substantially all its real property under long-term net leases and accounts for these leases in accordance with the provisions of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases," as amended. This Statement sets forth specific criteria for determining whether a lease is to be accounted for as a financing lease or an operating lease.

a. *Financing Method*—Under this method, minimum lease payments to be received plus the estimated value of the property at the end of the lease are considered the gross investment in the lease. Unearned income, representing the difference between gross investment and actual cost of the leased property, is amortized to income over the lease term so as to produce a constant periodic rate of return on the net investment in the lease.

b. *Operating Method*—Under this method, revenue is recognized as rentals become due and expenses (including depreciation) are charged to operations as incurred.

*Properties*—Properties held for investment, other than those accounted for under the financing method, are carried at cost less accumulated depreciation unless declines in the values of the properties are considered other than temporary, at which time the property is written down to net realizable value. A property is classified as held for sale at the time management determines that the criteria in SFAS 144 have been met. Properties held for sale are carried at the lower of cost or net realizable value. Such properties are no longer depreciated and their operations are included in discontinued operations. As a result of the reclassification of certain real estate to properties held for sale during the

years ended December 31, 2004 and 2003, income and expenses of such properties are reclassified to discontinued operations for all prior periods.

**Depreciation**—Depreciation is principally computed using the straight-line method over the estimated useful life of the particular property or property components, which range from 3 to 45 years.

**Use of Estimates**—Management has made a number of estimates and assumptions relating to the reporting of assets and liabilities, revenues and expenses and the disclosure of contingent assets and liabilities to prepare these financial statements in conformity with generally accepted accounting principles. Actual results could differ from those estimates. The more significant estimates include the valuation of (1) long-lived assets; (2) mortgages and notes receivable; (3) marketable equity and debt securities and other investments; (4) costs to complete for land, house and condominium developments; (5) gaming-related liability and loyalty programs; and (6) deferred tax assets.

**Revenue and Expense Recognition—**

1. Revenue from real estate sales and related costs are recognized at the time of closing primarily by specific identification. The Company follows the guidelines for profit recognition set forth by Financial Accounting Standards Board (FASB) Statement No. 66, "Accounting for Sales of Real Estate."

2. Casino revenues and promotional allowances—The Company recognizes revenues in accordance with industry practice. Casino revenue is the net win from gaming activities (the difference between gaming wins and losses). Casino revenues are net of accruals for anticipated payouts of progressive and certain other slot machine jackpots. Revenues include the retail value of rooms, food and beverage and other items that are provided to customers on a complimentary basis. A corresponding amount is deducted as promotional allowances. Hotel and restaurant revenue is recognized when services are performed. The cost of such complimentaries is included in "Hotel and casino operating expenses."

The Company also rewards customers, through the use of loyalty programs with points based on amounts wagered, that can be redeemed for a specified period of time for cash. The Company deducts the cash incentive amounts from casino revenue.

3. Sales, advertising and promotion—These costs are expensed as incurred and were approximately \$28.8 million, \$22.9 million and \$18.1 million in the years ended December 31, 2004, 2003 and 2002, respectively.

**Land and Construction-in-Progress**—These costs are stated at the lower of cost or net realizable value. Interest is capitalized on expenditures for long-term projects until a salable condition is reached. The capitalization rate is based on the interest rate on specific borrowings to fund the projects.

**Investment in NEG Holding LLC**—Due to the substantial uncertainty that the Company will receive any distribution above the priority and guaranteed payment amounts, the Company accounts for its investment in Holding LLC as a preferred investment whereby guaranteed payment amounts received and receipts of the priority distribution amount are recorded as reductions in the investment and income is recognized from accretion of the investment up to the priority distribution amount, including the guaranteed payments (based on the interest method). See Note 14. Following receipt of the guaranteed payments and priority distributions, the residual interest in the investment will be valued at zero.

The Company periodically evaluates the carrying amount of its investment in Holding LLC to determine whether current events or circumstances warrant adjustments to the carrying value and/or revisions to accretion of income. The Company currently believes that no such impairment has occurred and that no revision to the accretion of income is warranted.

*Accounting for Impairment of a Loan*—If it is probable that, based upon current information, the Company will be unable to collect all amounts due according to the contractual terms of a loan agreement, the Company considers the asset to be "impaired." Reserves are established against impaired loans in amounts equal to the difference between the recorded investment in the asset and either the present value of the cash flows expected to be received, or the fair value of the underlying collateral if foreclosure is deemed probable or if the loan is considered collateral dependent.

*Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of*—Long-lived assets held and used by the Company and long-lived assets to be disposed of, are reviewed for impairment whenever events or changes in circumstances, such as vacancies and rejected leases, indicate that the carrying amount of an asset may not be recoverable.

In performing the review for recoverability, the Company estimates the future cash flows expected to result from the use of the asset and its eventual disposition. If the sum of the expected future cash flows (undiscounted and without interest charges) is less than the carrying amount of the asset an impairment loss is recognized. Measurement of an impairment loss for long-lived assets that the Company expects to hold and use is based on the fair value of the asset. Long-lived assets to be disposed of are reported at the lower of carrying amount or fair value less cost to sell.

### **3. Related Party Transactions**

a. On May 26, 2004, American Casino acquired two Las Vegas casino/hotels, Arizona Charlie's Decatur and Arizona Charlie's Boulder from Mr. Icahn and an entity affiliated with Mr. Icahn, for aggregate consideration of \$125.9 million. Mr. Icahn is Chairman of the Board of American Property Investors, Inc. 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 9).

b. At December 31, 2002, the Company had a \$250 million note receivable from Mr. Icahn, Chairman of the General Partner, which was repaid in October 2003. Interest income of approximately \$7.9 million and \$9.9 million was earned on this loan in the years ended December 31, 2003 and 2002, respectively, and is included in "Interest income on U.S. Government and Agency obligations and other investments" in the Consolidated Statements of Earnings.

c. In 1997, the Company entered into a license agreement for a portion of office space from an affiliate. The license agreement dated as of February 1, 1997 expired May 22, 2004 and has been extended on a month to month basis. Pursuant to the license agreement, the Company has the non-exclusive use of approximately 2,275 square feet of office space and common space for which it paid \$11,185 plus 10.77% of "additional rent". In the years ended December 31, 2004, 2003 and 2002, the Company paid such affiliate approximately \$162,000, \$159,000 and \$153,000 respectively, in connection with this licensing agreement. The terms of such sublease were reviewed and approved by the Audit Committee. If the Company must vacate the space, it believes there will be adequate alternative space available.

d. American Casino billed the Sands Hotel and Casino (the "Sands") approximately \$387,500, \$191,000 and \$27,900, respectively, for administrative services performed by Stratosphere personnel during the years ended December 31, 2004, 2003 and 2002.

e. NEG received management fees from affiliates of approximately \$11.6 million, \$8.0 million and \$7.6 million in the years ended December 31, 2004, 2003 and 2002, respectively.

f. For the years ended December 31, 2004, 2003 and 2002, the Company paid approximately \$325,000, \$273,000 and \$160,900, respectively, to an affiliate of the General Partner for telecommunication services, XO Communications, Inc.

g. See Note 12b. and c. regarding the purchase of TransTexas and Panaco debt, respectively, from Icahn affiliates.

h. See Note 12a. regarding the purchase of Atlantic Holdings Notes from Icahn affiliates.

i. See Note 17 regarding additional related party obligations.

j. See Note 29 regarding subsequent events.

#### 4. Investment in U.S. Government and Agency Obligations

The Company has investments in U.S. Government and Agency Obligations whose maturities range from January 2005 to December 2008 as follows (in \$millions):

|                     | December 31, |                |            |                |
|---------------------|--------------|----------------|------------|----------------|
|                     | 2004         |                | 2003       |                |
|                     | Cost Basis   | Carrying Value | Cost Basis | Carrying Value |
| Available for Sale: |              |                |            |                |
| Matures in:         |              |                |            |                |
| less than 1 year.   | \$ 96.8      | \$ 96.8        | \$ 52.8    | \$ 52.6        |
| 2-5 years           | 5.6          | 5.5            | 9.0        | 9.0            |
|                     | \$ 102.4     | \$ 102.3       | \$ 61.8    | \$ 61.6        |

#### 5. Marketable Equity and Debt Securities (in \$millions)

|                                 | December 31, |                |            |                |
|---------------------------------|--------------|----------------|------------|----------------|
|                                 | 2004         |                | 2003       |                |
|                                 | Cost Basis   | Carrying Value | Cost Basis | Carrying Value |
| Available for Sale:             |              |                |            |                |
| Philip Service Corporation (a): |              |                |            |                |
| Equity                          | \$ —         | \$ —           | \$ —       | \$ —           |
| Corporate bonds (b)             | —            | —              | 45.1       | 51.6           |
| Other                           | 2.2          | 2.2            | 1.3        | 4.2            |
| Total                           | \$ 2.2       | \$ 2.2         | \$ 46.4    | \$ 55.8        |

a. At December 31, 2002, the Company owned the following approximate interests in Philip Service Corporation ("Philip"): (1) 1.8 million common shares, (2) \$14.2 million in secured term debt, and (3) \$10.9 million in accreted secured convertible payment-in-kind debt. The Company had an approximate 7% equity interest in Philip and an Icahn affiliate had an approximate 38% equity interest. Icahn affiliates also owned term and payment-in-kind debt.

The market value of Philip's common stock declined steadily since it was acquired by the Company. In 2002, based on a review of Philip's financial statements, management of the Company deemed the decrease in value to be other than temporary. As a result, the Company wrote down its investment in Philip's common stock by charges to earnings of \$8,476,000 and charges to other comprehensive income ("OCI") of \$761,000 in the year ended December 31, 2002. This investment had been previously written down by approximately \$6.8 million in charges to earnings. The Company's adjusted carrying value of Philip's common stock was approximately \$200,000 at December 31, 2002.

In June 2003, Philip announced that it and most of its wholly owned U.S. subsidiaries filed voluntary petitions under Chapter 11 of the Federal Bankruptcy Code.

In the year ended December 31, 2003, management of the Company determined that it was appropriate to write-off the balance of its investment in the Philip's common stock by a charge to earnings of approximately \$961,000; of this amount \$761,000 was previously charged to other comprehensive income in 2002, which was reversed in 2003, and included in the \$961,000 charge to earnings.

Approximately \$6.6 million of charges to OCI were reversed and the investments were reclassified at their original cost to "Other investments" at December 31, 2002. These adjustments had no effect on the Company's reported earnings for the year ended December 31, 2002.

In 2003, the cost basis of the debt was approximately \$22.1 million. As previously mentioned, Philip filed for bankruptcy protection in June 2003. Management of the Company reviewed Philip's financial statements, bankruptcy documents and the prices of recent purchases and sales of the debt and determined this investment to be impaired. Based upon this review, management concluded the fair value of the debt to be approximately \$3.3 million; therefore, the Company recorded a write-down of approximately \$18.8 million by a charge to earnings which was included in "Write-down of marketable equity and debt securities and other investments" in the Consolidated Statements of Earnings in the year ended December 31, 2003. In December 2003, the Company sold two-thirds of its term and paid-in-kind ("PIK") debt with a basis of \$2.2 million for \$2.6 million, generating a gain of \$0.4 million.

Philip emerged from bankruptcy on December 31, 2003 as a private company controlled by an Icahn affiliate. The Company's remaining interest in the debt was delivered and exchanged for approximately 443,000 common shares representing a 4.4% equity interest in the new Philip, valued at the carrying value of the debt at December 31, 2004 of \$0.7 million.

b. In December 2003, the Company acquired approximately \$86.9 million principal amount of corporate bonds for approximately \$45.1 million. These 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 income ("OCI") was approximately \$6.5 million. This OCI was reversed in the year ended December 31, 2004 upon the sale of corporate bonds. In the year ended December 31, 2004, the Company sold the debt securities for approximately \$82.3 million, recognizing a gain of \$37.2 million.

## 6. Due from Brokers

In November and December 2004, the Company sold short certain equity securities which resulted in the following (in \$000's):

- a. \$123,001—Due From Brokers—Net proceeds from short sales of equity securities and cash collateral held by brokerage institutions against our short sales.
- b. \$90,674—Securities Sold Not Yet Purchased—Our obligation to cover the short sales of equity securities described above. The Company recorded unrealized losses on securities sold short of \$23.6 million in the year ended December 31, 2004 reflecting an increase in price in the securities sold short. This amount has been recorded in the consolidated statements of earnings for the year then ended in the respective caption. At March 1, 2005, the \$23.6 million of unrealized losses on such securities has been reversed and a net gain of approximately \$3.0 million recorded.

## 7. Other Investments (in \$000's)

|   | Balance at December 31, |                  |
|---|-------------------------|------------------|
|   | 2004                    | 2003             |
| Peninsula/Hampton & Alex Hotel (a) and (b)              | \$ —                    | \$ 42,030        |
| WestPoint Stevens (c)                                   | 205,850                 | —                |
| Union Power Partners L.P. and Panda Gila River L.P. (d) | 39,316                  | —                |
| Other   | 782                     | 8,298            |
|   | <u>\$ 245,948</u>       | <u>\$ 50,328</u> |

- a. On November 30, 2000, the Company entered into a mezzanine loan agreement to fund \$23 million in two tranches to an unaffiliated borrower. The funds were to be used for certain initial development costs associated with a 65 unit condominium property located at 931 1st Avenue in New

York City. The first tranche of \$10 million was funded on November 30, 2000 and provided for interest accruing at a rate of 25% per annum, with principal and interest due at maturity, May 29, 2003. Also, in November 2000, approximately \$3.7 million of the second tranche of the loan was funded. The balance of approximately \$9.3 million was funded in installments during 2001. The second tranche provided for interest accruing at a rate of 21.5% per annum, with principal and interest due at maturity, November 29, 2002. The loans were payable at any time from the proceeds of unit sales, after satisfaction of senior debt of approximately \$45 million. The loans were secured by the pledge of membership interests in the entity that owns the real estate. In May 2002, the Company received approximately \$31.3 million for prepayment of the mezzanine loans. The balance of the prepayment of \$8.3 million represented accrued interest (\$7.9 million) and exit fees (\$0.4 million), which amounts were recognized as "Interest income on U.S. Government and Agency obligations and other investments" and "Dividend and other income" respectively, in the Consolidated Statements of Earnings for the year ended December 31, 2002.

b. At December 31, 2002, the Company had funded two mezzanine loans for approximately \$23.2 million and had commitments to fund, under certain conditions, additional advances of approximately \$5 million. Both loans had an interest rate of 22% per annum compounded monthly. The Peninsula loan, for a Florida condominium development, which had a term of 24 months from the date of funding, February 2002, was repaid in full in 2003. Approximately \$6.8 million of interest income was recorded and is included in "Interest income on U.S. Government and Agency obligations and other investments" in the Consolidated Statements of Earnings for the year ended December 31, 2003. The Alex Hotel loan, for a New York City hotel with approximately 200 rooms, had a term of 36 months from the closing date, April 2002. At December 31, 2003, accrued interest of approximately \$4.4 million had been deferred for financial statement purposes pending receipt of principal and interest payments in connection with this loan. Origination fees of \$3.0 million have been received in connection with one of the mezzanine loans and approximately \$1.5 million and \$1.1 million has been recognized in "Dividend and other income" in the Consolidated Statements of Earnings in the years ended December 31, 2003 and 2002 respectively. In February 2003, the Company funded the Hampton mezzanine loan for approximately \$30 million on a Florida condominium development. The loan was due in 18 months with one six month extension and had an interest rate of 22% per annum compounded monthly. At December 31, 2003, accrued interest of approximately \$6.7 million had been deferred for financial statement purposes pending receipt of principal and interest payments in connection with this loan. On April 30, 2004, the Company received approximately \$16.7 million for the prepayment of the Alex Hotel loan. The principal amount of the loan was \$11 million. The prepayment included approximately \$5.7 million of accrued interest, which was recognized as interest income in the year ended December 31, 2004.

c. In 2004, the Company purchased approximately \$278.1 million principal amount of secured bank debt of WestPoint Stevens, a company currently operating as a debtor in possession under Chapter 11 of the U.S. Bankruptcy Code, for a purchase price of approximately \$205.8 million. Approximately \$193.6 million principal amount is secured by a first priority lien of certain assets of WestPoint and approximately \$84.5 million principal amount is secured by a second priority lien. Interest income totaled approximately \$7.2 million in the year ended December 31, 2004 and is included in "Interest income on U.S. Government and Agency obligations and other investments" in the Consolidated Statements of Earnings for the year then ended. Based on the latest available information, the Company has not accreted this debt and does not believe that an other than temporary impairment has been identified.

d. In 2004, the Company purchased approximately \$71.8 million of secured bank debt of Union Power Partners L.P. and Panda Gila River L.P. for a purchase price of approximately \$39.3 million. No interest is currently being received on this debt. Based on the latest available information, the Company has not accreted this debt and does not believe that an other than temporary impairment has been identified.

## 8. Real Estate Leased to Others Accounted for Under the Financing Method

Real estate leased to others accounted for under the financing method is summarized as follows (in \$000's):

|  | December 31,     |                   |
|--|------------------|-------------------|
|  | 2004             | 2003              |
| Minimum lease payments receivable          | \$ 97,725        | \$ 161,785        |
| Unguaranteed residual value                | 48,980           | 74,651            |
|  | <u>146,705</u>   | <u>236,436</u>    |
| Less unearned income                       | 57,512           | 99,080            |
|  | <u>89,193</u>    | <u>137,356</u>    |
| Less current portion of lease amortization | 3,912            | 5,738             |
|  | <u>\$ 85,281</u> | <u>\$ 131,618</u> |

The following is a summary of the anticipated future receipts of the minimum lease payments receivable at December 31, 2004 (in \$000's):

| Year Ending<br>December 31, | Amount           |
|-----------------------------|------------------|
| 2005                        | \$ 11,941        |
| 2006                        | 11,746           |
| 2007                        | 10,832           |
| 2008                        | 9,476            |
| 2009                        | 9,255            |
| Thereafter                  | 44,475           |
|                             | <u>\$ 97,725</u> |

At December 31, 2004, approximately \$73,144,000 and \$107,543,000, respectively, of the net investment in financing leases was pledged to collateralize the payment of nonrecourse mortgages payable.

## 9. Real Estate Leased to Others Accounted for Under the Operating Method

a. Real estate leased to others accounted for under the operating method is summarized as follows (in \$000's):

|                               | December 31,     |                  |
|-------------------------------|------------------|------------------|
|                               | 2004             | 2003             |
| Land                          | \$ 13,666        | \$ 24,040        |
| Commercial Buildings          | 45,972           | 83,252           |
|                               | <u>59,638</u>    | <u>107,292</u>   |
| Less accumulated depreciation | 10,520           | 30,849           |
|                               | <u>\$ 49,118</u> | <u>\$ 76,443</u> |

The following is a summary of the anticipated future receipts of minimum lease payments under non-cancelable leases at December 31, 2004 (in \$000's):

| Year Ending<br>December 31, | Amount           |
|-----------------------------|------------------|
| 2005                        | \$ 7,186         |
| 2006                        | 6,232            |
| 2007                        | 5,649            |
| 2008                        | 5,383            |
| 2009                        | 5,001            |
| Thereafter                  | 19,753           |
|                             | <u>\$ 49,204</u> |

At December 31, 2004 and 2003, approximately \$14,166,000 and \$15,630,000, respectively, of net real estate leased to others was pledged to collateralize the payment of non-recourse mortgages payable.

b. Property held for sale (in \$000's):

|                               | December 31,     |                   |
|-------------------------------|------------------|-------------------|
|                               | 2004             | 2003              |
| Leased to others              | \$ 74,444        | \$ 146,416        |
| Vacant                        | 450              | 2,550             |
|                               | <u>74,894</u>    | <u>148,966</u>    |
| Less accumulated depreciation | 16,873           | 20,153            |
|                               | <u>\$ 58,021</u> | <u>\$ 128,813</u> |

At December 31, 2004 and 2003, approximately \$34,881,000 and \$105,984,000, respectively, of real estate held for sale was pledged to collateralize the payment of non-recourse mortgages payable.

The following is a summary of income from discontinued operations including the hotel and resort properties described in Note 11 (in \$000's):

|                                     | December 31,    |                 |                 |
|-------------------------------------|-----------------|-----------------|-----------------|
|                                     | 2004            | 2003            | 2002            |
| Rental income                       | \$ 18,621       | \$ 23,093       | \$ 21,073       |
| Hotel and resort operating income   | 905             | 6,128           | 5,676           |
|                                     | <u>19,526</u>   | <u>29,221</u>   | <u>26,749</u>   |
| Mortgage interest expense           | 3,858           | 7,208           | 6,737           |
| Depreciation and amortization       | 1,244           | 5,129           | 4,464           |
| Property expenses                   | 3,123           | 3,550           | 3,409           |
| Hotel and resort operating expenses | 3,801           | 5,681           | 5,202           |
|                                     | <u>12,026</u>   | <u>21,568</u>   | <u>19,812</u>   |
| Income from discontinued operations | <u>\$ 7,500</u> | <u>\$ 7,653</u> | <u>\$ 6,937</u> |

## 10. Hotel and Casino Operating Properties

In September 2000, Stratosphere's Board of Directors approved a going private transaction proposed by the Company and an affiliate of Icahn. On February 1, 2001 the Company entered into a merger agreement with Stratosphere under which the Company would acquire the remaining shares of



Stratosphere that it did not currently own. The Company owned approximately 51% of Stratosphere and Mr. Icahn owned approximately 38.6%. The Company, subject to certain conditions, agreed to pay approximately \$44.3 million for the outstanding shares of Stratosphere not currently owned by it. Stratosphere stockholders not affiliated with Icahn would receive a cash price of \$45.32 per share and Icahn related stockholders would receive a cash price of \$44.33 per share. This transaction was completed in December 2002 after shareholders' approval.

The acquisition by the Company of the minority shares not owned by an Icahn affiliate has been accounted for as a purchase in accordance with Financial Accounting Standards Board ("FASB") Statement No. 141, "Business Combinations." The acquisition by the Company of the common stock held by an Icahn affiliate has been recorded at historical cost. The excess of the affiliate's historical cost over the amount of the cash disbursed, which amounted to \$21,151,000, has been accounted for as an addition to the General Partner's equity.

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. Upon obtaining all approvals necessary under gaming laws, the acquisition was completed on May 26, 2004. The terms of the transactions were approved by the Audit Committee, which was advised by its independent financial advisor and by counsel. As previously contemplated, upon closing, the Company transferred 100% of the common stock of Stratosphere to American Casino. As a result, following the acquisition and contributions, American Casino owns and operates three gaming and entertainment properties in the Las Vegas metropolitan area. The Company consolidates American Casino and its subsidiaries in the Company's 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. The Company's December 31, 2003 and 2002 consolidated financial statements have been restated to reflect the acquisition of Arizona Charlie's Decatur and Arizona Charlie's Boulder.

Earnings, capital contributions and distributions of the two Arizona Charlie's entities prior to the acquisition have been allocated to the General Partner. In accordance with the purchase agreement, prior to the acquisition, capital contributions of \$22.8 million were received from and capital distributions of \$17.9 million were paid to affiliates of Mr. Icahn. The assets acquired and liabilities assumed in this acquisition have been accounted for at historical cost. A reduction of \$125.9 million, reflecting the purchase price, has been made to the General Partner's equity in May 2004.

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 were 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. Upon satisfaction of all closing conditions on May 26, 2004, the proceeds of the offering were released from escrow. American Casino used the proceeds of the offering for the acquisition, to repay intercompany indebtedness and for distributions to the Company.

American Casino's operations for the years ended December 31, 2004, 2003 and 2002 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 depreciation and amortization and income tax provision. Such expenses have been included in "Depreciation and amortization expense" and "Income tax expense" in the Consolidated Statements of Earnings. American Casino's depreciation and amortization expense was \$23.5 million, \$20.2 million and \$20.2 million for the years ended December 31, 2004, 2003 and 2002, respectively. American Casino's income tax provision was \$10.1 million and \$4.9 million for the years ended December 31, 2004 and

2002, respectively. American Casino recorded an income tax benefit of \$1.8 million for the year ended December 31, 2003.

The amount of revenues and expenses attributable to casino, hotel and restaurants, respectively, is summarized as follows:

|   | Year Ended December 31, |            |            |
|---|-------------------------|------------|------------|
|   | 2004                    | 2003       | 2002       |
|   | (in \$000's)            |            |            |
| <b>Hotel and casino operating income:</b>   |                         |            |            |
| Casino                                      | \$ 167,972              | \$ 147,888 | \$ 143,057 |
| Hotel                                       | 54,653                  | 47,259     | 44,263     |
| Food and beverage                           | 66,953                  | 59,583     | 56,349     |
| Tower, retail, and other income             | 33,778                  | 30,336     | 28,247     |
| Gross revenues                              | 323,356                 | 285,066    | 271,916    |
| Less promotional allowances                 | (23,375)                | (22,255)   | (21,893)   |
| Net revenues                                | \$ 299,981              | \$ 262,811 | \$ 250,023 |
| <b>Hotel and casino operating expenses:</b> |                         |            |            |
| Casino                                      | \$ 61,985               | \$ 61,284  | \$ 59,879  |
| Hotel                                       | 24,272                  | 22,074     | 20,142     |
| Food and beverage                           | 48,495                  | 44,990     | 43,393     |
| Other operating expenses                    | 14,131                  | 13,524     | 14,505     |
| Selling, general, and administrative        | 78,720                  | 74,985     | 80,019     |
| Total expenses                              | \$ 227,603              | \$ 216,857 | \$ 217,938 |

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.

American Casino's property and equipment consist of the following as of December 31, 2004 and 2003 (in \$000's):

|  | December 31, |            |
|--|--------------|------------|
|  | 2004         | 2003       |
| Land and improvements, including land held for development | \$ 47,210    | \$ 47,041  |
| Building and improvements                                  | 221,314      | 220,280    |
| Furniture, fixtures and equipment                          | 108,595      | 98,586     |
| Construction in progress                                   | 7,348        | 7,224      |
|  | 384,467      | 373,131    |
| Less accumulated depreciation and amortization             | 95,107       | 74,428     |
|  | \$ 289,360   | \$ 298,703 |

Included in property and equipment at both December 31, 2004 and 2003 are assets recorded under capital leases of \$4.0 million.

In connection with the purchase of the master lease from Strato-Retail, American Casino assumed lessor responsibilities for various non-cancelable operating leases for certain retail space. The future

minimum lease payments to be received under these leases for years subsequent to December 31, 2004 are as follows:

| Years ending December 31, |                  |
|---------------------------|------------------|
| 2005                      | \$ 5,877         |
| 2006                      | 4,778            |
| 2007                      | 3,615            |
| 2008                      | 2,177            |
| 2009                      | 1,224            |
| Thereafter                | 959              |
| <b>Total Payments</b>     | <b>\$ 18,630</b> |

The above minimum rental income does not include contingent retail income contained within certain retail operating leases. In addition, American Casino is reimbursed by lessees for certain operating expenses.

#### 11. Hotel and Resort Operating Properties

a. The Company owns a hotel and resort property that is part of a master planned community situated in the town of Mashpee, located on Cape Cod in Massachusetts. This property includes two golf courses, other recreational facilities, condominium and time share units and land for future development.

Total initial costs of approximately \$28 million were classified as follows: approximately \$17.4 million as "Hotel and resort operating properties", \$8.9 million as "Land and construction-in-progress" and \$1.7 million as "Receivables and other current assets" on the Consolidated Balance Sheet.

Resort operations have been included in the "Hotel and resort operating income and expenses" in the Consolidated Statements of Earnings. Net hotel and resort operations for this property ("hotel and resort operating income" less "hotel and resort operating expenses") resulted in income of approximately \$2,243,000, \$3,033,000 and \$1,909,000 for the years ended December 31, 2004, 2003, and 2002, respectively. Hotel and resort operating expenses include all expenses except for approximately \$2,544,000, \$2,451,000 and \$1,833,000 for the years ended December 31, 2004, 2003 and 2002 of depreciation and amortization, respectively, which is included in such caption in the Consolidated Statements of Earnings.

Resort operations are highly seasonal in nature with peak activity occurring from June to September.

b. The Company owned a hotel located in Miami, Florida which had a carrying value of approximately \$6.4 million at December 31, 2003, and was unencumbered by any mortgages. Approximately \$1.3 million of capital improvements were completed in the year ended December 31, 2002.

The Company had a management agreement for the operation of the hotel with a national management organization. As a result of the decision to sell the property in 2004, the operating results for the hotel have been reclassified to discontinued operations for all periods. Net hotel and resort operations ("hotel and resort operating revenues" less "hotel and resort operating expenses") totaled approximately \$306,000, \$596,000 and \$494,000 for the years ended December 31, 2004, 2003 and 2002, respectively and have been included in discontinued operations in the Consolidated Statements of Earnings. Depreciation expense of \$0, \$210,000 and \$374,000 for the years ended December 31, 2004,

2003 and 2002, respectively, have been included in discontinued operations in the Consolidated Statements of Earnings.

In 2004, the Company sold the hotel located in Miami, Florida for a loss of approximately \$0.9 million which included a license termination fee of approximately \$0.7 million.

c. During the three months ended March 31, 2005, the Company sold a golf resort in Tampa, Florida for \$8.5 million resulting in a gain on sale of \$5.7 million. Net hotel and resort operations for this property totalling approximately \$41,000, \$61,000, (\$378,000), (\$311,000) and (\$156,000) for the three months ended March 31, 2005 and 2004, and the years ended December 31, 2004, 2003 and 2002, respectively, have been reclassified to discontinued operations.

**12. Investment in Debt Securities of Affiliates (in \$000's):**

|                                  | December 31, |           |
|----------------------------------|--------------|-----------|
|                                  | 2004         | 2003      |
| Atlantic Holdings/GB Holdings(a) | \$ 60,004    | \$ 24,696 |
| TransTexas(b)                    | 27,500       | —         |
| Panaco(c)                        | 38,000       | —         |
|                                  | 125,504      | 24,696    |
| Less current portion             | (10,429)     | —         |
|                                  | \$ 115,075   | \$ 24,696 |

a. In 1998 and 1999, the Company acquired an interest in the Sands, located in Atlantic City, New Jersey, by purchasing the principal amount of approximately \$31.4 million of First Mortgage Notes ("Notes") issued by GB Property Funding Corp. ("GB Property"). GB Property was organized as a special purpose entity for the borrowing of funds by Greate Bay Hotel and Casino, Inc. ("Greate Bay"). The purchase price for such notes was approximately \$25.3 million. An affiliate of the General Partner also made an investment in the Notes of GB Property. A total of \$185 million of such Notes were issued.

Greate Bay owned and operated the Sands, a destination resort complex, located in Atlantic City, New Jersey. On January 5, 1998, GB Property and Greate Bay filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code to restructure its long term debt.

In July 2000, the U.S. Bankruptcy Court ruled in favor of the reorganization plan proposed by affiliates of the General Partner which provided for an additional investment of \$65 million by the Icahn affiliates in exchange for a 46% equity interest, with bondholders (which also includes the Icahn affiliates) to receive \$110 million in new notes of GB Property First Mortgage ("GB Notes") and a 54% equity interest. The plan, which became effective September 29, 2000, provided the Icahn affiliates with a controlling interest.

As required by the New Jersey Casino Control Act (the "Casino Control Act"), the Partnership Agreement was amended to provide that securities of the Company are held subject to the condition that if a holder thereof is found to be disqualified by the Casino Control Commission, pursuant to the provisions of the Casino Control Act, such holder shall dispose of his interest in the Company in accordance with the Casino Control Act.

At December 31, 2003, the Company owned approximately \$26.9 million principal amount of GB Notes which were accounted for a held-to-maturity securities. These notes bore interest of 11% per annum and were due to mature in September 2005. The carrying value of these notes at December 31, 2003 was approximately \$24.7 million.

As part of the Atlantic Holdings Consent Solicitation and Offer to Exchange further described in Note 13, the Company tendered its GB Notes and received \$26.9 million of 3% Notes due 2008 issued by Atlantic Coast Entertainment Holdings, Inc. (the "Atlantic Holdings Notes").

On December 27, 2004, the Company purchased approximately \$37.0 million principal amount of the Atlantic Holdings Notes from two Icahn affiliates for cash consideration of \$36.0 million. As a result, the Company owns approximately 96.4% of the outstanding Atlantic Holdings Notes. The carrying value of the Atlantic Holdings Notes at December 31, 2004 is approximately \$60 million. Interest income of approximately \$2.5 million in the year ended December 31, 2004 and \$2.9 million in each of the years ended December 31, 2003 and 2002 was recognized.

b. On December 6, 2004, the Company purchased from affiliates of Mr. Icahn \$27,500,000 aggregate principal amount, or 100%, of the outstanding term notes issued by TransTexas (the "TransTexas Notes"). The purchase price was \$28,245,890, which equals the principal amount of the TransTexas Notes plus accrued but unpaid interest. The notes are payable annually in equal consecutive annual payments of \$5,000,000, with the final installment due August 28, 2008. Interest is payable semi-annually in February and August at the rate of 10% per annum. Interest income of approximately \$196,000 was recognized in the year ended December 31, 2004 and is included in "Interest income on U.S. Government and Agency obligations and other investments" in the Consolidated Statements of Earnings in the year then ended. The TransTexas Notes are secured by a first priority lien on all of TransTexas assets. TransTexas is indirectly controlled by Mr. Icahn. See Note 29.

c. On December 6, 2004, the Company purchased all of the membership interests of Mid River LLC ("Mid River") from Icahn affiliates for an aggregate purchase price of \$38,125,999. The assets of Mid River consist of \$38,000,000 principal amount of term loans of Panaco (the "Panaco Debt"). The purchase price included accrued but unpaid interest. The principal is payable in twenty-seven equal quarterly installments of the unpaid principal of \$1,357,143 commencing on March 15, 2005, through and including September 15, 2011. Interest is payable quarterly at a rate per annum equal to the LIBOR daily floating rate plus four percent, which was 6.346% at December 31, 2004. Interest income of \$155,991 was recognized in the year ended December 31, 2004 and is included in "Interest income on U.S. Government and Agency obligations and other investments" in the Consolidated Statements of Earnings for the year then ended. See Note 29.

### **13. Equity Interest in GB Holdings, Inc.**

At December 31, 2003, the Company owned approximately 3.6 million shares, or 36.3%, of GB Holdings, Inc. ("GB Holdings"), the holding company for the Sands (See Note 12). The Company also owned approximately \$26.9 million principal amount of GB Notes.

On June 30, 2004, GB Holdings announced that its stockholders approved the transfer of the Sands to its wholly-owned subsidiary, Atlantic Holdings, in connection with the restructuring of GB Holdings debt.

On July 22, 2004, Atlantic Holdings announced that its Consent Solicitation and Offer to Exchange, in which it offered to exchange the Atlantic Holdings Notes for GB Notes, expired and approximately \$66 million principal amount of the GB Notes (approximately 60% of the outstanding GB Notes) were tendered to Atlantic Holdings for exchange. On July 23, 2004, 10 million warrants were distributed, on a pro rata basis, to stockholders. The warrants, under certain conditions, will allow the holders to purchase common stock of Atlantic Holdings at a purchase price of \$.01 per share, representing 27.5% of the outstanding common stock of Atlantic Holdings, on a fully diluted basis. Mr. Icahn and his affiliated companies hold approximately 77.5% of the GB Holdings stock and held approximately 58.2% of the GB Notes, of which the Company owns approximately 36.3% of the common stock and held approximately 24.5% of the debt. This debt is included in "Investment in debt

securities of Affiliates" in the consolidated balance sheets. The Company and Mr. Icahn tendered all of their GB Notes in the exchange. The Company received:

- \$26,914,500 principal amount of the Atlantic Holdings Notes;
- \$3,620,753 in cash representing accrued interest on the GB Notes and \$100 per \$1,000 in principal amount of the GB Notes; and
- 3,627,711 warrants, which under certain conditions will allow the Company to purchase approximately 998,000 shares of common stock at \$.01 per share of Atlantic Holdings, representing approximately 10% of the outstanding common stock of Atlantic Holdings, on a fully diluted basis.

The Company reflects its equity interest in GB Holdings as "Equity interest in GB Holdings, Inc." in the Consolidated Balance Sheets.

The Company owns warrants to purchase, upon the occurrence of certain events, approximately 10.0% of the fully diluted common stock of Atlantic Holdings. Atlantic Holdings owns 100% of ACE Gaming LLC, the owner and operator of the Sands. The Company has entered into an agreement with affiliates of Mr. Icahn, to acquire an additional approximate 41.2% of the outstanding common stock of GB Holdings and warrants to purchase, upon the occurrence of certain events, an additional approximate 11.3% of the fully diluted common stock of Atlantic Holdings for an aggregate of \$12.0 million of depositary units, plus an aggregate of up to \$6.0 million of Depositary Units, if GB Holdings meets certain earnings targets during 2005 and 2006. See Note 29 regarding the Company's agreement to purchase an approximate 41.2% interest in GB Holdings from an affiliate of Mr. Icahn. Upon consummation of the purchase agreement, we will own approximately 77.5% of the outstanding GB Holdings common stock and warrants to purchase, upon the occurrence of certain events, approximately 21.3% of the fully diluted common stock of Atlantic Holdings.

In the year ended December 31, 2004, the Company recorded an impairment loss of \$15.6 million on its equity investment in GB Holdings. The purchase price pursuant to the agreement described above was less than our carrying value, approximately \$26.2 million, for the approximately 36.3% of the outstanding GB Holdings common stock that the Company owns. In the September 30, 2004 Form 10-Q of GB Holdings, there was a working capital deficit of approximately \$32 million and there was approximately \$40 million of debt maturing in September 2005.

#### **14. National Energy Group**

##### **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 NEG from entities affiliated with Mr. Icahn for an aggregate cash consideration of approximately \$148.1 million plus approximately \$6.7 million in cash 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 legal counsel. The securities acquired were \$148,637,000 in principal amount of outstanding 10<sup>3</sup>/<sub>4</sub>% Senior Notes due 2006 of NEG and 5,584,044 shares of common stock of NEG. As a result of the foregoing transaction and the acquisition by the Company of additional securities of NEG prior to the closing, the Company beneficially owns in excess of 50% of the outstanding common stock of NEG.

NEG owns a 50% interest in Holding LLC, the other 50% interest in Holding LLC is held by Gascon Partners ("Gascon") an Icahn affiliate and managing member. Holding LLC owns NEG Operating LLC ("Operating LLC") which owns operating oil and gas properties managed by NEG. Under the Holding LLC operating agreement, as of September 30, 2004, NEG is to receive guaranteed payments of approximately \$39.9 million in addition to a priority distribution of approximately \$148.6 million before the Icahn affiliate receives any monies. Due to the substantial uncertainty that

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

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

b. Investment in NEG Holding LLC

As explained below, NEG's investment in Holding LLC 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. The Company currently assesses its investment in Holding LLC through a cash flow analysis to determine if Holding LLC will have sufficient cash flows to fund the guaranteed payments and priority distribution. This analysis is done on a quarterly basis. Holding LLC is required to make SFAS 69 disclosures on an annual basis, which include preparation of reserve reports by independent engineers and cash flow projections. These cash flow projections are the basis for the cash flow analysis. The Company follows the conceptual guidance of SFAS 144 "Accounting for the Impairment of Long-Lived Assets" in assessing any potential impairments in Holding LLC.

Summarized financial information for Holding LLC is as follows (in \$000's):

|  | December 31,      |                   |
|--|-------------------|-------------------|
|  | 2004              | 2003              |
| Current assets                               | \$ 23,146         | \$ 33,415         |
| Noncurrent assets(1)                         | 237,127           | 190,389           |
| <b>Total assets</b>                          | <b>\$ 260,273</b> | <b>\$ 223,804</b> |
| Current liabilities                          | \$ 22,456         | \$ 14,253         |
| Noncurrent liabilities                       | 63,636            | 48,514            |
| <b>Total liabilities</b>                     | <b>86,092</b>     | <b>62,767</b>     |
| <b>Members' equity</b>                       | <b>174,181</b>    | <b>161,037</b>    |
| <b>Total liabilities and members' equity</b> | <b>\$ 260,273</b> | <b>\$ 223,804</b> |

(1) Primarily oil and gas properties

|                         | December 31,     |                  |                  |
|-------------------------|------------------|------------------|------------------|
|                         | 2004             | 2003             | 2002             |
|                         | (in \$000's)     |                  |                  |
| Total revenues          | \$ 78,727        | \$ 77,606        | \$ 35,900        |
| Costs and expenses      | (47,313)         | (46,766)         | (32,064)         |
| <b>Operating income</b> | <b>31,414</b>    | <b>30,840</b>    | <b>3,836</b>     |
| Other income (expense)  | (2,292)          | 30               | 10,090           |
| <b>Net income</b>       | <b>\$ 29,122</b> | <b>\$ 30,870</b> | <b>\$ 13,926</b> |

In August 2000, pursuant to a plan of reorganization, Holding LLC was formed. Prior to September 2001, NEG owned and operated certain oil and gas properties. In September 2001, NEG contributed oil and natural gas properties in exchange for Holding LLC's obligation to pay the Company the guaranteed payments and priority distributions. The Company also received a 50% membership interest in Holding LLC. Gascon also contributed oil and natural gas assets and cash in exchange for future payments and a 50% membership interest. The Holding LLC operating agreement requires the payment of guaranteed payments and priority distributions to NEG in order to pay interest on senior debt and the principal amount of the debt of \$148.6 million in 2006. After the receipt by NEG of the guaranteed payments and priority distributions that total approximately \$300 million, the

agreement requires the distribution of an equal amount to Gascon. Holding LLC is contractually obligated to make the guaranteed payments and priority distributions to NEG and Gascon before any distributions can be made to the LLC interest.

NEG originally recorded its investment in Holding LLC at the historical cost of the oil and gas properties contributed into the LLC. In evaluating the appropriate accounting to be applied to this investment, NEG anticipated it will collect the guaranteed payments and priority distributions through 2006. However, based on cash flow projections prepared by the management of Holding LLC and its reserve engineers, there is substantial uncertainty that there will be any residual value in Holding LLC subsequent to the payment of the amounts required to be paid to Gascon. Due to this uncertainty, NEG has been accreting its investment in Holding LLC, the value of its preferred interest at the implicit rate of interest up to the guaranteed payments and priority distributions collected through 2006, 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 in Holding LLC. The preferred investment in Holding LLC is evaluated quarterly for other than temporary impairment. The rights of NEG upon liquidation of Holding LLC are identical to those described above and the Company considered those rights in determining the appropriate presentation.

Because of the continuing substantial uncertainty that there will be any residual value in Holding LLC after the guaranteed payments and priority distributions, no income other than the accretion is currently being given accounting recognition. NEG's preferred investment will be reduced to zero upon collection of the priority distributions in 2006. After that date, NEG will continue to monitor payments made to Gascon and, at such time as it would appear that there is any residual value to NEG's 50% interest in Holding LLC, it would receive accounting recognition. Throughout, and up to this point, NEG believes that the 50% interest in Holding LLC represents a residual interest that is currently valued at zero. The Company accounts for its residual equity investment in Holding LLC in accordance with APB 18.

The following is a roll forward of the Investment in Holding LLC as of December 31, 2004 and 2003 (in \$000s):

|  | December 31, |            |
|--|--------------|------------|
|  | 2004         | 2003       |
| Investment in Holding LLC at beginning of period | \$ 69,346    | \$ 108,880 |
| Priority distribution from Holding LLC           | —            | (51,446)   |
| Guaranteed payment from Holding LLC              | (15,978)     | (18,230)   |
| Accretion of investment in Holding LLC           | 34,432       | 30,142     |
| Investment in Holding LLC at end of period       | \$ 87,800    | \$ 69,346  |

The Holding LLC 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. The priority distribution amount includes all outstanding debt owed to entities owned or controlled by Carl C. Icahn, including the amount of NEG's 10.75% Senior Notes. As of December 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.

2. The priority distribution amount is to be paid to NEG. Such payment is to occur by November 6, 2006.



3. 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.

4. 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.

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

c. See Note 29 pertaining to additional oil and gas acquisitions.

## 15. Significant Property Transactions

Information on significant property transactions during the three-year period ended December 31, 2004 is as follows:

a. In September 2002, the Company purchased an industrial building located in Nashville, Tennessee for approximately \$18.2 million. The building was constructed in 2001 and is fully leased to two tenants, Alliance Healthcare and Jet Equipment & Tools Inc., with leases expiring in 2011. The annual net operating income was anticipated to be approximately \$1.6 million increasing to approximately \$1.9 million by 2011. In October 2002, the Company closed a \$12.7 million non-recourse mortgage loan on the Nashville, Tennessee property. The loan bore interest at 6.4% per annum and was due to mature in ten years. Required payments were interest only for the first three years and then principal amortization would commence based on a thirty-year amortization schedule. In June 2004, the Company sold the property for a selling price of \$19.2 million. A gain of approximately \$1.4 million was recognized in the year ended December 31, 2004 and is included in discontinued operations in the Consolidated Statements of Earnings.

At December 31, 2003, the property had a carrying value of approximately \$18,066,000 and was encumbered by a non-recourse mortgage in the amount of \$12,700,000.

b. In October 2002, the Company sold a property located in North Palm Beach, Florida for a selling price of \$3.5 million. A gain of approximately \$2.4 million was recognized in the year ended December 31, 2002.

c. In October 2003, the Company sold a property located in Columbia, Maryland to its tenant for a selling price of \$11 million. A gain of approximately \$5.8 million was recognized in the year ended December 31, 2003.

d. In the year ended December 31, 2004, the Company sold 57 rental real estate properties for approximately \$245 million which were encumbered by mortgage debt of approximately \$94 million which was repaid from the sales proceeds.

In the year ended December 31, 2004, of the 57 properties, the Company sold nine financing lease properties for approximately \$43.6 million. The properties were encumbered by mortgage debt of approximately \$26.8 million which was repaid from the sales proceeds. The carrying value of these properties was approximately \$38.3 million; therefore, the Company recognized a gain on sale of

approximately \$5.3 million in the year ended December 31, 2004, which is included in income from continuing operations in the Consolidated Statements of Earnings.

In the year ended December 31, 2004, of the 57 properties, the Company sold 48 operating and held for sale properties for approximately \$201.8 million. The properties were encumbered by mortgage debt of approximately \$67 million which was repaid from the sales proceeds. The carrying value of these properties was approximately \$126.6 million. The Company recognized a gain on sale of approximately \$75.2 million in year ended December 31, 2004, which is included in income from discontinued operations in the Consolidated Statements of Earnings.

At December 31, 2004, the Company had fifteen 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 \$97.9 million. These properties are encumbered by mortgage debt of approximately \$36.0 million. At December 31, 2004, the carrying value of these properties is approximately \$62.3 million. As of March 1, 2005, the Company has sold four of the fifteen properties for \$46.5 million. The properties had a carrying value of \$29.9 million. A gain of \$16.6 million will be recorded in the three months ended March 31, 2005. 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."

e. In January 2004, in conjunction with its reinvestment program, the Company purchased a 34,422 square foot commercial condominium unit ("North Moore Condos") located in New York City for approximately \$14.5 million. The unit contains a Citibank branch, a furniture store and a restaurant. Current annual rent income from the three tenants is approximately \$1,289,000. The Company obtained mortgage financing of \$10 million for this property in April 2004. The mortgage bears interest at the rate of 5.73% per annum, and matures in March 2014. Annual debt service is \$698,760.

f. In July 2004, the Company purchased two Vero Beach, Florida waterfront communities, Grand Harbor and Oak Harbor ("Grand Harbor"), including their respective golf courses, tennis complex, fitness center, beach club and clubhouses. The acquisition also included properties in various stages of development, including land for future residential development, improved lots and finished residential units ready for sale. The purchase price was approximately \$75 million, which included approximately \$62 million of land and construction in progress. The Company plans to invest in the further development of these properties and the enhancement of the existing infrastructure.

## 16. Mortgages Payable

Mortgages payable, all of which are nonrecourse to the Company, are summarized as follows (in \$000's):

| Range of Interest Rates  | Range of Maturities | Annual Principal<br>and Interest Payment | Balance At December 31, |            |
|--|---------------------|--|-------------------------|------------|
|  |                     |  | 2004                    | 2003       |
| 5.630%–8.250%  | 10/15/07–10/01/14   | \$ 10,811                                | \$ 91,896               | \$ 180,989 |
| Less current portion and mortgages on properties held for sale |                     |  | (31,177)                | (87,753)   |
|  |                     |  | \$ 60,719               | \$ 93,236  |

The following is a summary of the contractual future principal payments of the mortgages (in \$000's):

| Year Ending<br>December 31, | Amount    |
|-----------------------------|-----------|
| 2005                        | \$ 4,759  |
| 2006                        | 5,116     |
| 2007                        | 11,428    |
| 2008                        | 24,385    |
| 2009                        | 7,211     |
| 2010–2014                   | 38,997    |
|                             | \$ 91,896 |

a. See Note 15a. for Mid-South Logistics financing in October 2002.

b. On May 16, 2003, the Company executed a mortgage note secured by a distribution facility located in Windsor Locks, Connecticut and obtained funding in the principal amount of \$20 million. The loan bears interest at 5.63% per annum and matures on June 1, 2013. Annual debt service is approximately \$1,382,000 based on a 30 year amortization schedule.

c. See Note 15e. for North Moore Condo financing in April 2004.

#### 17. Senior Notes and Credit Facilities Due Affiliates

a. At December 31, 2002, NEG had \$10.9 million outstanding under its existing \$100 million credit facility with Amos, an Icahn affiliate. Amos continued to be the holder of the credit facility; however, the \$10.9 million note outstanding under the credit facility was contributed to Holding LLC as part of Gascon's contribution to Holding LLC on September 12, 2001. In December 2001, the maturity date of the credit facility was extended to December 31, 2003 and NEG was given a waiver of compliance with respect to any and all covenant violations. NEG was not in compliance with the minimum interest coverage ratio at September 30, 2002; and December 31, 2002 and the current ratio at December 31, 2002, however, in December 2001, NEG was given a waiver of compliance with respect to any and all covenant violations through December 31, 2003.

On March 26, 2003, Holding LLC distributed the \$10.9 million note outstanding under NEG's revolving credit facility as a priority distribution to NEG, thereby canceling the note. Also, on March 26, 2003, NEG, Amos and Operating LLC entered into an agreement to assign the credit facility to Operating LLC. Effective with this assignment, Amos amended the credit facility to increase the revolving commitment to \$150 million, increase the borrowing base to \$75.0 million and extend the revolving due date until June 30, 2004. Concurrently, Amos extended a \$42.8 million loan to Operating LLC under the amended credit facility. Operating LLC then distributed \$42.8 million to Holding LLC which, thereafter, made a \$40.5 million priority distribution and a \$2.3 million guaranteed payment to NEG. NEG utilized these funds to pay the entire amount of the long-term interest payable on the Notes and interest accrued thereon outstanding on March 27, 2003. The Amos facility was canceled on December 29, 2003 in conjunction with a third party bank financing.

b. On September 24, 2001, Arizona Charlie's, Inc., the predecessor entity to Arizona Charlie's, LLC, which was acquired by American Casino in May 2004, refinanced the remaining principal balance of \$7.9 million on a prior note payable to Amos Corp., an affiliate of Mr. Icahn. The note bore interest at the prime rate plus 1.50% (5.75% per annum at December 31, 2002), with a maturity of June 2004, and was collateralized by all the assets of Arizona Charlie's, Inc. The note was repaid during November 2003. During the years ended December 31, 2003 and 2002, Arizona Charlie's, Inc. paid interest expense of \$0.1 million and \$0.4 million, respectively.

c. During fiscal year 2002, Fresca, LLC, which was acquired by American Casino in May 2004, entered into an unsecured line of credit in the amount of \$25.0 million with Starfire Holding Corporation ("Starfire"), an affiliate of Mr. Icahn. The outstanding balance, including accrued interest, was due and payable on January 2, 2007. As of December 31, 2003, Fresca, LLC had \$25.0 million outstanding. The note bore interest on the unpaid principal balance from January 2, 2002 until maturity at the rate per annum equal to the prime rate, as established by Fleet Bank, from time to time, plus 2.75%. Interest was payable semi-annually in arrears on the first day of January and July, and at maturity. The note was guaranteed by Mr. Icahn. The note was repaid during May 2004. During the years ended December 31, 2004, 2003 and 2002, Fresca, LLC paid \$0.7 million, \$1.2 million and \$0.4 million, respectively.

#### **18. Senior Secured Notes Payable and Credit Facility**

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 notes have a fixed annual interest rate of 7.85% per annum, which will be paid every six months on February 1 and August 1, commencing August 1, 2004. The notes will mature on February 1, 2012. The proceeds were 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. Upon satisfaction of all closing conditions on May 26, 2004, the proceeds of the offering were released from escrow. American Casino used the proceeds of the offering for the acquisition of Arizona Charlie's Decatur and Boulder, to repay intercompany indebtedness and for distributions to the Company. The notes are recourse only to, and are secured by a lien on the assets of, American Casino and certain of its subsidiaries. The notes restrict the ability of American Casino and its restricted subsidiaries, subject to certain exceptions, 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. As of December 31, 2004, American Casino is in compliance with all terms and conditions of the notes. The notes were issued in an offering not registered under the Securities Act of 1933. At the time American Casino issued the notes, it entered into a registration rights agreement in which it agreed to exchange the notes for new notes which have been registered under the Securities Act of 1933. On October 26, 2004, the SEC declared effective American Casino's registration statement. The exchange offer was consummated on December 1, 2004.

The Company recorded approximately \$15.6 million of interest expense on the notes payable in the year ended December 31, 2004 which is included in "Interest expense" in the Consolidated Statements of Earnings for the year then ended.

A syndicate of lenders has provided to American Casino a non-amortizing \$20.0 million revolving credit facility. The commitments are available to the Company in the form of revolving loans, and include a letter of credit facility (subject to \$10.0 million sublimit). Loans made under the senior secured revolving facility will mature and the commitments under them will terminate on January 29, 2008. There were no borrowings outstanding under the facility at December 31, 2004.

Of the Company's cash and cash equivalents at December 31, 2004, approximately \$75.2 million in cash is at American Casino which is subject to the restrictions of its notes and the revolving credit facility.

The fair value of American Casino's long-term debt is based on the quoted market prices for the same or similar issues or on the current rates offered to us for debt of the same remaining maturities. As such, the estimated fair value of long-term debt outstanding is approximately \$229.0 million as of December 31, 2004.

## 19. Senior Unsecured Notes Payable

On May 12, 2004, the Company closed on its offering of senior notes due 2012. The notes, in the aggregate principal amount of \$353 million, were priced at 99.266%. The notes have a fixed annual interest rate of 8<sup>1</sup>/<sub>8</sub>%, which will be paid every six months on June 1 and December 1, commencing December 1, 2004. The notes will mature on June 1, 2012. AREH is a guarantor of the debt; however, no other subsidiaries guarantee payment on the notes. American Real Estate Finance Corp. ("AREF"), a wholly-owned subsidiary of the Company, was formed solely for the purpose of serving as a co-issuer of the debt securities. AREF will not have any operations or assets and will not have any revenues. The Company intends to use the proceeds of this offering for general business purposes, including its primary business strategy of acquiring undervalued assets in its existing lines of business or other businesses and to provide additional capital to grow its existing businesses. The notes restrict the ability of the Company, subject to certain exceptions, to, among other things; incur additional debt; pay dividends or make distributions; repurchase stock; create liens; and enter into transactions with affiliates. As of December 31, 2004, the Company is in compliance with all terms and conditions of the notes. The notes were issued in an offering not registered under the Securities Act of 1933. At the time the Company issued the notes, the Company entered into a registration rights agreement in which the Company agreed to exchange the notes for new notes which have been registered under the Securities Act of 1933. On November 8, 2004, the SEC declared effective the Company's registration statement. The exchange offer was consummated on December 15, 2004.

The fair value of the Company's long-term debt is based on the quoted market prices for the same or similar issues or on the current rates offered to us for debt of the same remaining maturities. As such, the estimated fair value of long-term debt outstanding is approximately \$375 million as of December 31, 2004.

The Company recorded approximately \$18.5 million of interest expense on the notes payable in the year ended December 31, 2004 which is included in "Interest expense" in the Consolidated Statements of Earnings for the year then ended.

## 20. Accounts Payable, Accrued Expenses and Other Current Liabilities

Accounts payable, accrued expenses and other liabilities consist of the following (In \$000's):

|                     | December 31,     |                  |
|---------------------|------------------|------------------|
|                     | 2004             | 2003             |
| Accrued liabilities | \$ 11,463        | \$ 11,951        |
| Accrued payroll     | 11,113           | 12,507           |
| Due to Panaco, Inc. | 16,242           | —                |
| Other               | 42,975           | 21,316           |
|                     | <u>\$ 81,793</u> | <u>\$ 45,774</u> |

## 21. Earnings Per Limited Partnership Unit

Basic earnings per LP unit are based on net earnings attributable to limited partners, and in period prior to July 1, 2003, adjusted for the preferred pay-in-kind distribution to Preferred Unitholders. 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 LP unit are 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.

## Net Income Per Unit

Basic net income per American Real Estate Partners, L.P. Unit is derived by dividing net income attributable to the limited partners by the basic weighted average number of American Real Estate Partners, L.P. Units outstanding for each period. Diluted earnings per American Real Estate Partners, L.P. Unit is derived by adjusting net income attributable to the limited partners for the assumed dilutive effect of the redemption of the Preferred LP Units ("Diluted Earnings") and dividing Diluted Earnings by the diluted earnings weighted average number of American Real Estate Partners, L.P. Units outstanding for each period.

|   | December 31, |            |            |
|---|--------------|------------|------------|
|   | 2004         | 2003       | 2002       |
| In \$000's (except per unit data)   |              |            |            |
| <b>Attributable to Limited Partners:</b>  |              |            |            |
| Basic income from continuing operations   | \$ 71,456    | \$ 48,573  | \$ 56,365  |
| Add Preferred LP Unit distribution  | 4,981        | 4,792      | 4,518      |
| Income before discontinued operations   | 76,437       | 53,365     | 60,887     |
| Income from discontinued operations   | 81,051       | 10,787     | 6,799      |
| Diluted earnings  | \$ 157,488   | \$ 64,152  | \$ 67,686  |
| Weighted average limited partnership units outstanding                                  | 46,098,284   | 46,098,284 | 46,098,284 |
| Dilutive effect of redemption of Preferred LP Units                                     | 5,444,028    | 8,391,659  | 10,368,414 |
| Weighted average limited partnership units and equivalent partnership units outstanding | 51,542,312   | 54,489,943 | 56,466,698 |
| <b>Basic earnings:</b>  |              |            |            |
| Income from continuing operations   | \$ 1.55      | \$ 1.00    | \$ 1.12    |
| Income from discontinued operations   | 1.76         | 0.24       | 0.15       |
| Basic earnings per LP unit  | \$ 3.31      | \$ 1.24    | \$ 1.27    |
| <b>Diluted earnings:</b>  |              |            |            |
| Income from continuing operations   | \$ 1.48      | \$ 0.94    | \$ 1.00    |
| Income from discontinued operations   | 1.57         | 0.19       | 0.12       |
| Diluted earnings per LP unit  | \$ 3.05      | \$ 1.13    | \$ 1.12    |

## 22. Preferred Units

Pursuant to rights offerings consummated in 1995 and 1997, Preferred Units were issued. 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.

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 per unit. 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 December 31, 2004 and 2003, 10,286,264 and 9,796,607 Preferred Units are issued and outstanding, respectively. In February 2004, the number of authorized Preferred LP units was increased to 10,400,000.

Pursuant to the terms of the Preferred Units, on March 4, 2005, 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 is payable on March 31, 2005 to holders of record as of March 15, 2005. In addition, the Company increased the number of authorized Preferred Units to 10,900,000.

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 the preferred pay-in-kind distribution for the period from July 1, 2003 to December 31, 2003 of \$2,449,000 and all future distributions have been and will be recorded as "Interest expense" in the Supplemental Consolidated Statements of Earnings.

The Company recorded \$5.1 million and \$2.4 million of interest expense in the years ended December 31, 2004 and 2003, respectively, in connection with the Preferred LP units distribution. These amounts are included in "Interest expense" in the Supplemental Consolidated Statements of Earnings for the years then ended.

### 23. Income Taxes (in \$000's)

|  | December 31, |              |
|--|--------------|--------------|
|  | 2004         | 2003         |
| The difference between the book basis and the tax basis of the net assets of the Company, not directly subject to income taxes, is as follows: |              |              |
| Book basis of AREH net assets excluding American Casino and NEG  | \$ 1,319,566 | \$ 1,149,418 |
| Excess of tax over book  | 120,820      | 79,238       |
| Tax basis of net assets  | \$ 1,440,386 | \$ 1,228,656 |

#### a. Corporate Income Taxes

(i) The Company's corporate subsidiaries recorded the following income tax (expense) benefit attributable to continuing operations for American Casino and NEG for the years ended December 31, 2004, 2003 and 2002 (in \$000's):

|          | December 31, |            |             |
|----------|--------------|------------|-------------|
|          | 2004         | 2003       | 2002        |
| Current  | \$ (2,626)   | \$ (4,302) | \$ (311)    |
| Deferred | (14,137)     | 5,875      | (9,785)     |
|          | \$ (16,763)  | \$ 1,573   | \$ (10,096) |

(ii) The tax effect of significant differences representing net deferred tax assets (the difference between financial statement carrying values and the tax basis of assets and liabilities) for the Company is as follows at December 31, 2004 and 2003 (in \$000's):

|                                     | December 31, |           |
|-------------------------------------|--------------|-----------|
|                                     | 2004         | 2003      |
| Deferred tax assets:                |              |           |
| Depreciation                        | \$ 39,209    | \$ 39,858 |
| Net operating loss carryforwards    | 32,176       | 30,942    |
| Investment in Holding LLC           | 5,333        | 18,845    |
| Other                               | 5,954        | 5,962     |
|                                     | 82,672       | 95,607    |
| Valuation allowance                 | (14,588)     | (17,733)  |
| Net deferred tax assets             | 68,084       | 77,874    |
| Less current portion                | (2,685)      | (2,982)   |
| Non-current net deferred tax assets | \$ 65,399    | \$ 74,892 |

At December 31, 2004 and 2003, American Casino had net operating loss carryforwards available for federal income tax purposes of approximately \$16.0 million and \$28.5 million, respectively, which begin expiring in 2020.

(iii) The provision (benefit) for income taxes differs from the amount computed at the federal statutory rate as a result of the following:

|                                      | Year Ended December 31, |        |        |
|--------------------------------------|-------------------------|--------|--------|
|                                      | 2004                    | 2003   | 2002   |
| Federal statutory rate               | 35.0%                   | 35.0%  | 35.0%  |
| Tax deduction not given book benefit | 0.0                     | 5.0    | 0.0    |
| Income not subject to taxation       | (25.6)                  | (14.3) | (22.3) |
| Valuation allowance                  | (1.7)                   | (28.3) | (0.5)  |
| Other                                | 1.1                     | 0.3    | 0.3    |
|                                      | 8.8%                    | (2.3)% | 12.5%  |

SFAS 109 requires a "more likely than not" criterion be applied when evaluating the realizability of a deferred tax asset. As of December 31, 2002, given Stratosphere's history of losses for income tax purposes, the volatility of the industry within which the Stratosphere operates, and certain other factors, Stratosphere had established a valuation allowance for the deductible temporary differences, including the excess of the tax basis of the Stratosphere's assets over the basis of such assets for financial statement purposes and the tax carryforwards. However, at December 31, 2003, based on various factors including the current earnings trend and future taxable income projections, Stratosphere determined that it was more likely than not that the deferred tax assets will be realized and removed the valuation allowance. In accordance with SFAS 109, the tax benefit of any deferred tax asset that existed on the effective date of a reorganization should be reported as a direct addition to contributed capital. Stratosphere has deferred tax assets relating to both before and after Stratosphere emerged from bankruptcy in September of 1998. The net decrease in the valuation allowance was \$79.3 million, of which a net amount of \$47.5 million was credited to partners' equity in the year ended December 31, 2003.



Additionally, American Casino's acquisition of Arizona Charlie's, LLC and Fresca, LLC in May 2004 resulted in a net increase in the tax basis of assets in excess of book basis. As a result, the Company recognized an additional deferred tax asset of approximately \$2.5 million from the transaction. Pursuant to SFAS 109, the benefit of the deferred tax asset from this transaction is credited directly to equity.

At December 31, 2004 and 2003, NEG had net operating loss carryforwards available for federal income tax purposes of approximately \$75.9 and \$58.0 million, respectively, which begin expiring in 2009. Net operating loss limitations may be imposed as a result of subsequent changes in stock ownership of NEG. Prior to the formation of Holding LLC, the income tax benefit associated with the loss carryforwards had not been recognized since, in the opinion of management, there was not sufficient positive evidence of future taxable income to justify recognition of a benefit. Upon the formation of Holding LLC, management again evaluated all evidence, both positive and negative, in determining whether a valuation allowance to reduce the carrying value of deferred tax assets was still needed and concluded, based on the projected allocations of taxable income by Holding LLC, NEG more likely than not will realize a partial benefit from the loss carryforwards. In accordance with SFAS 109, NEG recorded a deferred tax asset of \$25.5 million as of December 31, 2002, \$25.9 million as of December 31, 2003, and \$19.3 million as of December 31, 2004. Ultimate realization of the deferred tax asset is dependent upon, among other factors, NEG's ability to generate sufficient taxable income within the carryforward periods and is subject to change depending on the tax laws in effect in the years in which the carryforwards are used. As a result of the recognition of expected future income tax benefits, subsequent periods will reflect a full effective tax rate provision.

#### **24. Commitments and Contingencies**

a. In January 2002, the Cape Cod Commission, (the "Commission"), a Massachusetts regional planning body created in 1989, concluded that AREP's New Seabury development 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"), an AREP 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 civil 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 Commission's second decision and petitioning the court 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 did not yet rule on the initial proposal to build 675 residential/hotel units and 80,000 square feet of commercial space. 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, the court consolidated the three complaints into one proceeding. In March 2004, New Seabury and the Commission each moved for Summary Judgment to dispose of remaining claims under all three complaints and to obtain a final judgment from the Court. The Court heard arguments in June 2004 and took matters under advisement. The Commission and New Seabury filed a joint motion to delay, until May 6, 2005, any ruling by the court on New Seabury's pending motion for summary judgment and the Commission's pending cross-motion for summary judgment. The Company is currently in settlement negotiations with the Commission but these discussions may not be successful. 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 December 31, 2004 was approximately \$10.5 million.

The General Partner monitors all tenant bankruptcies and defaults and may, when it deems it necessary or appropriate, establish additional reserves for such contingencies.

b. 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 Company's consolidated financial statements taken as a whole.

## **25. Employee Benefit Plans**

a. Employees of the Company who are members of various unions are covered by union-sponsored, collectively bargained, multi-employer health and welfare and defined benefit pension plans. The Company recorded expenses for such plans of approximately \$8,100,000, \$7,600,000 and \$6,500,000 for the years ended December 31, 2004, 2003 and 2002, respectively. The Company does not have information from the plans' sponsors with respect to the adequacy of the plans' funding status.

b. The Company has retirement savings plans under Section 401(k) of the Internal Revenue Code covering its non-union employees. The plans allow employees to defer, within prescribed limits, a portion of their income on a pre-tax basis through contributions to the plans. The Company currently matches, within prescribed limits, up to 6.25% of eligible employees' compensation at rates up to 50% of the employee's contribution. The Company recorded charges for matching contributions of approximately \$794,000, \$714,000 and \$981,000, for the years ended December 31, 2004, 2003 and 2002, respectively.

## **26. Fair Value of Financial Instruments**

The carrying amount of cash and cash equivalents, receivables, investment in debt securities of affiliates and accounts payable, accrued expenses and other liabilities and the Preferred Limited Partnership Units Liability are carried at cost, which approximates their fair value.

### ***Other Investments***

The fair values of the mortgages and notes receivable past due, in process of foreclosure, or for which foreclosure proceedings are pending, are based on the discounted cash flows of the underlying lease. The fair values of the mortgages and notes receivable satisfied after year end are based on the amount of the net proceeds received.

The fair values of the mortgages and notes receivable which are current are based on the discounted cash flows of their respective payment streams.

The approximate estimated fair values of other investments held as of December 31, 2004 and 2003 are summarized as follows (in \$000's):

|       | At December 31, 2004 |                      | At December 31, 2003 |                      |
|-------|----------------------|----------------------|----------------------|----------------------|
|       | Net Investment       | Estimated Fair Value | Net Investment       | Estimated Fair Value |
| Total | \$ 245,948           | \$ 248,900           | \$ 50,328            | \$ 55,000            |

The net investment at December 31, 2004 and 2003 is equal to the carrying amount of the mortgage receivable less any deferred income recorded.

### ***Mortgages Payable***

The approximate estimated fair values of the mortgages payable as of December 31, 2004 and 2003 are summarized as follows (in \$000's):

|       | At December 31, 2004 |                      | At December 31, 2003 |                      |
|-------|----------------------|----------------------|----------------------|----------------------|
|       | Carrying Value       | Estimated Fair Value | Carrying Value       | Estimated Fair Value |
| Total | \$ 91,896            | \$ 93,900            | \$ 180,989           | \$ 185,000           |

### ***Limitations***

Fair value estimates are made at a specific point in time, based on relevant market information and information about the financial instrument. These estimates are subjective in nature and involve uncertainties and matters of significant judgment and therefore cannot be determined with precision. Changes in assumptions could significantly affect the estimates.

### **27. Segment Reporting**

The Company is engaged in six operating segments consisting of the ownership and operation of (1) rental real estate, (2) hotel and resort operating properties, (3) hotel and casino operating properties, (4) property development, (5) investment in securities including investment in other limited partnerships and marketable equity and debt securities and (6) investment in oil and gas operating properties. The Company's reportable segments offer different services and require different operating strategies and management expertise.

Non-segment revenue to reconcile to total revenue consists primarily of interest income on treasury bills and other investments. Non-segment assets to reconcile to total assets includes investment in U.S. Government and Agency obligations, cash and cash equivalents, receivables and other assets.

The accounting policies of the segments are the same as those described in Note 2.

The Company assesses and measures segment operating results based on segment earnings from operations as disclosed below. Segment earnings from operations is not necessarily indicative of cash available to fund cash requirements nor synonymous with cash flow from operations.

The revenues, net earnings, assets and real estate investment capital expenditures for each of the reportable segments are summarized as follows for the years ended and as of December 31, 2004, 2003, and 2002 (in \$000's):

|   | December 31, |            |            |
|---|--------------|------------|------------|
|   | 2004         | 2003       | 2002       |
| <b>Revenues:</b>  |              |            |            |
| Hotel & casino operating properties                                       | \$ 297,868   | \$ 259,345 | \$ 250,328 |
| Land, house and condominium sales   | 26,591       | 13,265     | 76,024     |
| Rental real estate  | 17,796       | 20,207     | 21,574     |
| Hotel & resort operating properties                                       | 16,211       | 12,376     | 12,921     |
| Oil & gas operating properties  | 45,995       | 38,109     | 40,516     |
| Other investments   | 34,241       | 13,874     | 15,283     |
| Subtotal  | 438,702      | 357,176    | 416,646    |
| Reconciling items   | 13,310(1)    | 11,770(1)  | 18,006(1)  |
| Total revenues  | \$ 452,012   | \$ 368,946 | \$ 434,652 |
| <b>Net earnings:</b>  |              |            |            |
| <b>Segment earnings:</b>  |              |            |            |
| Hotel & casino operating properties                                       | \$ 70,265    | \$ 42,488  | \$ 32,390  |
| Land, house and condominium sales   | 6,355        | 4,136      | 21,384     |
| Oil & gas operating properties  | 34,849       | 30,879     | 33,411     |
| Rental real estate  | 12,863       | 14,368     | 14,206     |
| Hotel and resort operating properties                                     | 2,674        | 4,220      | 2,679      |
| Other investments   | 34,241       | 13,874     | 15,283     |
| Total segment earnings  | 161,247      | 109,965    | 119,353    |
| Interest income   | 13,310       | 11,770     | 18,006     |
| Interest expense  | (46,099)     | (21,103)   | (27,297)   |
| General and administrative expenses                                       | (9,806)      | (6,851)    | (7,029)    |
| Depreciation and amortization   | (29,815)     | (24,802)   | (23,646)   |
| Operating Income  | 88,837       | 68,979     | 79,387     |
| Gain on sales and disposition of real estate from continuing operations   | 5,262        | 7,121      | 8,990      |
| (Loss) gain on sale of assets   | —            | (1,503)    | (353)      |
| Loss on sale of limited partnership interests                             | —            | —          | (3,750)    |
| Write-down of marketable equity and debt securities and other investments | —            | (19,759)   | (8,476)    |
| Gain on sale of marketable equity securities                              | 40,159       | 2,607      | —          |
| Unrealized losses on securities sold short                                | (23,619)     | —          | —          |
| Impairment loss on equity interest in GB Holdings, Inc.                   | (15,600)     | —          | —          |
| Minority interest in net earnings of Stratosphere Corp                    | —            | —          | (1,943)    |
| Income tax (expense) benefit  | (16,763)     | 1,573      | (10,096)   |
| Income from discontinued operations                                       | 82,697       | 11,006     | 6,937      |
| General partner's share of net income                                     | (8,466)      | (10,664)   | (7,528)    |
| Net earnings-limited partners' unitholders                                | \$ 152,507   | \$ 59,360  | \$ 63,168  |

(1) Primarily interest income on U.S. Government and Agency obligations and other short-term investments and Icahn note receivable.

|   | December 31,     |                  |                  |
|---|------------------|------------------|------------------|
|   | 2004             | 2003             | 2002             |
| <b>Assets:</b>                                      |                  |                  |                  |
| Rental real estate                                  | \$ 196,332       | \$ 340,062       | \$ 359,700       |
| Hotel and casino operating properties               | 289,360          | 298,703          | 290,775          |
| Land and construction-in-progress                   | 106,537          | 43,459           | 40,415           |
| Hotel and resort operating properties               | 50,132           | 41,526           | 44,346           |
| Other investments                                   | 472,103          | 231,050          | 479,104          |
|   | <u>1,114,464</u> | <u>954,800</u>   | <u>1,214,340</u> |
| Reconciling items                                   | 1,148,593        | 691,806          | 491,691          |
|   | <u>2,263,057</u> | <u>1,646,606</u> | <u>1,706,031</u> |
| <b>Total</b>  |                  |                  |                  |
| <b>Real estate investment capital expenditures:</b> |                  |                  |                  |
| <b>Acquisitions:</b>                                |                  |                  |                  |
| Rental real estate                                  | \$ 14,583        | \$ —             | \$ 18,226        |
| Land and construction-in-progress                   | 61,845           | —                | —                |
| Hotel and casino operating properties               | 125,900          | —                | —                |
| Hotel and resort operating properties               | 16,463           | —                | —                |
|   | <u>218,791</u>   | <u>—</u>         | <u>18,226</u>    |
| <b>Developments:</b>                                |                  |                  |                  |
| Rental real estate                                  | \$ 18            | \$ 413           | \$ 181           |
| Land and construction-in-progress                   | 17,947           | —                | 1,138            |
| Hotel and casino operating properties               | 13,589           | 31,844           | 19,133           |
| Hotel and resort operating properties               | 2,614            | 1,067            | 2,582            |
|   | <u>34,168</u>    | <u>33,324</u>    | <u>23,034</u>    |

## 28. Repurchase of Depositary Units

The Company has previously been authorized to repurchase up to 1,250,000 Depositary Units. As of December 31, 2004, the Company has purchased 1,137,200 Depositary Units at an aggregate cost of approximately \$11,921,000.

## 29. Subsequent Events

a. On January 21, 2005, the Company announced that it had entered into agreements to acquire additional oil and gas and gaming and entertainment assets in transactions with affiliates of Carl C. Icahn. The aggregate consideration for the transactions is \$652 million, subject to certain purchase price adjustments, of which \$180 million is payable in cash and the balance is payable by the issuance of the Company's limited partnership depository units valued at \$29 per unit. Mr. Icahn currently owns indirectly approximately 86.5% of the Company's outstanding depository and preferred units and indirectly owns 100% of the Company's general partner, American Property Investors, Inc. Upon the closing of the transactions, Mr. Icahn will own approximately 90.1% of the Company's outstanding depository units and 86.5% of its preferred units, assuming no purchase price reductions. The transactions were approved by the Audit Committee of the Company's general partner. The Audit Committee was advised as to the transactions by independent legal counsel and financial advisor. The Audit Committee obtained opinions that the consideration to be paid in the transactions was fair, from a financial point of view, to the Company.

The transactions include the acquisition of the membership interest in Holding LLC other than that already owned by National Energy Group, Inc. (which is itself 50.02% owned by the Company); 100% of the equity of each of TransTexas Gas Corporation and Panaco, Inc., all of which will be consolidated under AREP Oil & Gas LLC, which is wholly owned by AREH; and approximately 41.2% of the common stock of GB Holdings and warrants to purchase, upon the occurrence of certain events, approximately 11.3% of the fully diluted common stock of its subsidiary, Atlantic Holdings, which owns 100% of ACE Gaming LLC, the owner and operator of the Sands. The closing of each of the

transactions is subject to certain conditions, including approval by the depositary unitholders of the issuance of the depositary units with respect to the transactions for which the consideration is depositary units and the receipt of the oil and gas reserve reports as of January 21, 2005 for each of Holding LLC, TransTexas and Panaco.

Prior to the transactions, each of the Company and Mr. Icahn's affiliated companies owned oil and gas and gaming and entertainment assets. Upon completion of these transactions, all such assets held by Mr. Icahn's affiliates will have been acquired by the Company. As a result of these transactions, the Company will have substantially increased its oil and gas holdings, as well as expanded its gaming and entertainment holdings.

Before the acquisition of GB Holdings and Atlantic Holdings securities, the Company owned approximately 36.3% of the outstanding common stock of GB Holdings and warrants to purchase, upon the occurrence of certain events, approximately 10.0% of the fully diluted common stock of Atlantic Holdings. As a result of the transactions, the Company will own approximately 77.5% of the common stock of GB Holdings and warrants to purchase approximately 21.3% of the fully diluted common stock of Atlantic Holdings. The Company also owns approximately \$63.9 million principal amount, or 96.4%, of the 3% senior notes due 2008 of Atlantic Holdings, which, upon the occurrence of certain events, are convertible into approximately 42.1% of the fully diluted common stock of Atlantic Holdings. If all outstanding Atlantic Holdings notes were converted and warrants exercised, the Company would own approximately 63.4% of the Atlantic Holdings common stock, GB Holdings would own approximately 28.8% of the Atlantic Holdings common stock and the remaining shares would be owned by the public.

Between December 6, 2004 and December 27, 2004, the Company purchased (1) \$27.5 million aggregate principal amount of the TransTexas Notes, (2) \$38.0 million aggregate principal amount of the Panaco Debt, and (3) \$37.0 million aggregate principal amount of Atlantic Holdings Notes, bringing the Company's ownership of that debt to \$63.9 million principal amount.

b. On February 7, 2005, the Company and its subsidiary, American Real Estate Finance Corp. ("AREF"), closed on their offering of senior notes due 2013. The notes, in the aggregate principal amount of \$480 million, were priced at 100% of principal amount. The notes will have a fixed annual interest rate of  $7\frac{1}{8}\%$ , which will be paid every six months on February 15 and August 15, commencing August 15, 2005. The notes will mature on February 15, 2013. AREF, a wholly owned subsidiary of the Company, was formed solely for the purpose of serving as co-issuer of the notes. AREF does not have any operations or assets and does not have any revenues. AREH is a guarantor of the debt; however, no other subsidiaries guarantee payment on the notes. The Company intends to use the proceeds of the offering, together with depositary units to be issued to fund for the acquisitions described above, to pay related fees and expenses and for general business purposes. The notes restrict the ability of the Company and AREH, subject to certain exceptions, to, among other things; incur additional debt; pay dividends or make distributions; repurchase stock; create liens; and enter into transactions with affiliates. The notes were issued in an offering not registered under the Securities Act of 1933. At the time the Company issued the notes, the Company entered into a registration rights agreement in which it agreed to exchange the notes for new notes which have been registered under the Securities Act of 1933. If the registration statement is not filed with the SEC by August 8, 2005 or if the registration statement is not declared effective by the SEC on or prior to December 5, 2005 or if we fail to consummate an exchange offer in which we issue notes registered under the Securities Act of 1933 for the privately issued notes within 30 business days after December 5, 2005, then we will pay, as liquidated damages, \$.05 per week per \$1,000 principal amount for the first 90 day period following such failure, increasing by an additional \$.05 per week of \$1,000 principal amount for each subsequent 90 day period, until all failures are cured.

**30. Quarterly Financial Data (unaudited) (in \$000'S, Except Per Unit Data)**

Three Months Ended(1)

|  | March 31, |            | June 30,  |            | September 30, |            | December 31, |            |
|--|-----------|------------|-----------|------------|---------------|------------|--------------|------------|
|  | 2004      | 2003       | 2004      | 2003       | 2004          | 2003       | 2004         | 2003       |
|  | Revenues  | \$ 102,218 | \$ 92,416 | \$ 117,367 | \$ 89,531     | \$ 118,487 | \$ 94,423    | \$ 113,940 |
| Operating Income   | \$ 24,138 | \$ 16,110  | \$ 26,629 | \$ 15,635  | \$ 23,968     | \$ 16,962  | \$ 14,102    | \$ 20,272  |
| Gains (losses) on property transactions                    | 6,047     | 1,138      | (226)     | (272)      | (10)          | 501        | (549)        | 5,754      |
| Loss on sale of assets                                     | —         | —          | —         | —          | —             | (311)      | —            | (1,192)    |
| Gain on sale of marketable equity and debt securities      | 28,857    | —          | 8,310     | —          | —             | 2,168      | 2,992        | 439        |
| Unrealized losses on securities sold short                 | —         | —          | —         | —          | —             | —          | (23,619)     | —          |
| Impairment loss on equity interest in GB Holdings, Inc.    | —         | —          | —         | —          | —             | —          | (15,600)     | —          |
| Write-down of marketable equity and debt securities        | —         | (961)      | —         | (18,798)   | —             | —          | —            | —          |
| Income (loss) from continuing operations before income tax | 59,042    | 16,287     | 34,713    | (3,435)    | 23,958        | 19,320     | (22,674)     | 25,273     |
| Income tax (expense) benefit                               | (6,169)   | (3,892)    | (3,088)   | (3,167)    | (3,637)       | (3,577)    | (3,869)      | 12,209     |
| Income (loss) from continuing operations                   | 52,873    | 12,395     | 31,625    | (6,602)    | 20,321        | 15,743     | (26,543)     | 37,482     |
| Income from discontinued operations                        | 10,147    | 1,997      | 50,161    | 3,815      | 10,702        | 3,210      | 11,687       | 1,984      |
| Net earnings (loss)  | \$ 63,020 | \$ 14,392  | \$ 81,786 | \$ (2,787) | \$ 31,023     | \$ 18,953  | \$ (14,856)  | \$ 39,466  |
| Net Earnings (loss) per limited Partnership unit(2):       |           |            |           |            |               |            |              |            |
| Basic earnings:  |           |            |           |            |               |            |              |            |
| Income (loss) from continuing operations                   | \$ 1.03   | \$ 0.15    | \$ 0.65   | \$ (0.21)  | \$ 0.43       | \$ 0.25    | \$ (0.56)    | \$ 0.81    |
| Income from discontinued operations                        | 0.22      | 0.05       | 1.06      | 0.08       | 0.23          | 0.07       | 0.24         | 0.04       |
| Basic earnings (loss) per LP unit                          | \$ 1.25   | \$ 0.20    | \$ 1.71   | \$ (0.13)  | \$ 0.66       | \$ 0.32    | \$ (0.32)    | \$ 0.85    |
| Diluted earnings:  |           |            |           |            |               |            |              |            |
| Income (loss) from continuing operations                   | \$ 0.93   | \$ 0.15    | \$ 0.60   | \$ (0.21)  | \$ 0.41       | \$ 0.23    | \$ (0.56)    | \$ 0.71    |
| Income from discontinued operations                        | 0.19      | 0.03       | 0.94      | 0.08       | 0.20          | 0.06       | 0.24         | 0.04       |
| Diluted earnings (loss) per LP unit                        | \$ 1.12   | \$ 0.18    | \$ 1.54   | \$ (0.13)  | \$ 0.61       | \$ 0.29    | \$ (0.32)    | \$ 0.75    |

(1) All quarterly amounts have been reclassified for the effects of reporting discontinued operations.

(2) Net earnings (loss) per unit is computed separately for each period and, therefore, the sum of such quarterly per unit amounts may differ from the total for the year.

QuickLinks

[EXHIBIT 99.3](#)

[REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES CONSOLIDATED BALANCE SHEETS DECEMBER 31, 2004 AND 2003](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF EARNINGS YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF CHANGES IN PARTNERS' EQUITY AND COMPREHENSIVE INCOME YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002 \(in \\$000's\)](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES CONSOLIDATED STATEMENTS OF CASH FLOWS YEARS ENDED DECEMBER 31, 2004, 2003 AND 2002](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES NOTES TO CONSOLIDATED FINANCIAL STATEMENTS December 31, 2004, 2003 and 2002](#)



**Item 15. Exhibits, Financial Statement Schedules.**

**(a)(1) Financial Statements:**

The following financial statements of American Real Estate Partners, L.P. are included in Part II, Item 8:

|  | Page<br>Number |
|--|----------------|
| Report of Independent Registered Public Accounting Firm  | 58             |
| Report of Independent Registered Public Accounting Firm  | 59             |
| Consolidated Balance Sheets—December 31, 2004 and 2003   | 60             |
| Consolidated Statements of Earnings—Years ended December 31, 2004, 2003 and 2002   | 61             |
| Consolidated Statements of Changes in Partners' Equity and Comprehensive Income—Years ended December 31, 2004, 2003 and 2002 | 62             |
| Consolidated Statements of Cash Flows—Years ended December 31, 2004, 2003 and 2002   | 63             |
| Notes to Consolidated Financial Statements   | 65             |

**(a)(2) Financial Statement Schedules:**

|  |     |
|--|-----|
| Schedule III—Real Estate Owned and Revenues Earned (by tenant or guarantor, as applicable) | 118 |
|--|-----|

All other Financial Statement schedules have been omitted because the required financial information is not applicable or the information is shown in the Financial Statements or Notes thereto.

**Exhibit Index**

- 3.1 Certificate of Limited Partnership of American Real Estate Partners, L.P. ("AREP") dated February 17, 1987 (incorporated by reference to Exhibit No. 3.1 to AREP's Form 10-Q for the quarter ended March 31, 2004 (SEC File No. 1-9516), filed on May 10, 2004).
  - 3.2 Amended and Restated Agreement of Limited Partnership of AREP, dated as of May 12, 1987 (incorporated by reference to Exhibit No. 3.2 to AREP's Form 10-Q for the quarter ended March 31, 2004 (SEC File No. 1-9516), filed on May 10, 2004).
  - 3.3 Amendment No. 1 to the Amended and Restated Agreement of Limited Partnership of AREP, dated February 22, 1995 (incorporated by reference to Exhibit 3.3 to AREP's Form 10-K for the year ended December 31, 1994 (SEC File No. 1-9516), filed on March 31, 1995).
  - 3.4 Certificate of Limited Partnership of American Real Estate Holdings Limited Partnership ("AREH"), dated February 17, 1987, as amended pursuant to First Amendment thereto, dated March 10, 1987 (incorporated by reference to Exhibit 3.5 to AREP's Form 10-Q for the quarter ended March 31, 2004 (SEC File No. 1-9516), filed on May 10, 2004).
  - 3.5 Amended and Restated Agreement of Limited Partnership of AREH, dated as of July 1, 1987 (incorporated by reference to Exhibit 3.5 to AREP's Form 10-Q for the quarter ended March 31, 2004 (SEC File No. 1-9516), filed on May 10, 2004).
  - 3.6 Amendment No. 2 to the Amended and Restated Agreement of Limited Partnership of AREP, dated as of August 16, 1996 (incorporated by reference to Exhibit 10.1 to AREP's Form 8-K (SEC File No. 1-9516), filed on August 16, 1996).
  - 3.7 Amendment No. 1 to the Amended and Restated Agreement of Limited Partnership of AREH, dated August 16, 1996 (incorporated by reference to Exhibit 10.2 to AREP's Form 8-K (SEC File No. 1-9516), filed on August 16, 1996).
  - 3.8 Amendment No. 3. to the Amended and Restated Agreement of Limited Partnership of AREP, dated May 9, 2002 (incorporated by reference to Exhibit 3.8 to AREP's Form 10-K for the year ended December 31, 2002 (SEC File No. 1-9516), filed on March 31, 2003).
-

- 3.9 Amendment No. 2 to the Amended and Restated Agreement of Limited Partnership of AREH, dated June 14, 2002 (incorporated by reference to Exhibit 3.9 to AREP's Form 10-K for the year ended December 31, 2002 (SEC File No. 1-9516), filed on March 31, 2003).
- 4.1 Depositary Agreement among AREP, American Property Investors, Inc. and Registrar and Transfer Company, dated as of July 1, 1987 (incorporated by reference to Exhibit 4.1 to AREP's Form 10-Q for the quarter ended March 31, 2004 (SEC File No. 1-9516), filed on May 10, 2004).
- 4.2 Amendment No. 1 to the Depositary Agreement dated as of February 22, 1995 (incorporated by reference to Exhibit 4.2 to AREP's Form 10-K for the year ended December 31, 1994 (SEC File No. 1-9516), filed on March 31, 1995).
- 4.3 Specimen Certificate representing Depositary Units.
- 4.4 Form of Application for Transfer of Depositary Units.
- 4.5 Specimen Certificate representing Preferred Units (incorporated by reference to Exhibit No. 4.9 to AREP's Form S-3 (SEC File No. 33-54767), filed on February 22, 1995).
- 4.6 Indenture, dated as of January 29, 2004, among American Casino & Entertainment Properties LLC ("ACEP"), American Casino & Entertainment Properties Finance Corp., ("ACEP Finance"), the guarantors from time to time party thereto and Wilmington Trust Company, as Trustee (the "Trustee"), incorporated by reference to Exhibit 4.1 to ACEP's Form S-4 (SEC File No. 333-118149), filed on August 12, 2004).
- 4.7 Form of ACEP and ACEP Finance 7.85% Note (incorporated by reference to Exhibit 4.10 to AREP's Form 10-Q for the quarter ended June 30, 2004 (SEC File No. 1-9516), filed on August 9, 2004).
- 4.8 Registration Rights Agreement, dated as of January 29, 2004, among ACEP, ACEP Finance, the guarantors party thereto and Bear, Stearns & Co. Inc. (incorporated by reference to Exhibit 4.4 to ACEP's Form S-4 (SEC File No. 333-118149), filed on August 12, 2004).
- 4.9 Indenture, dated as of May 12, 2004, among AREP, American Real Estate Finance Corp. ("AREP Finance"), AREH and Wilmington Trust Company, as Trustee, (incorporated by reference to Exhibit 4.1 to AREP's Form S-4 (SEC File No. 333-118021), filed on August 6, 2004).
- 4.10 Form of AREP and AREP Finance 8<sup>1</sup>/<sub>8</sub>% Note (incorporated by reference to Exhibit 4.2 to AREP's Form S-4 (SEC File No. 333-118021), filed August 6, 2004).
- 4.11 Registration Rights Agreement, dated as of May 12, 2004, among AREP, AREP Finance, AREH and Bear, Stearns & Co. Inc. (incorporated by reference to Exhibit 4.3 to AREP's Form S-4 (SEC File No. 333-118021), filed on August 6, 2004).
- 4.12 Indenture, dated as of February 7, 2005, among AREP, AREP Finance and AREH, as Guarantors, and Wilmington Trust Company, as Trustee (incorporated by reference to Exhibit 4.9 to AREP's Form 8-K (SEC File No. 1-9516), filed on February 10, 2005).
- 4.13 Form of AREP and AREP Finance 7V8% Senior Note (incorporated by reference to Exhibit 4.10 to AREP's Form 8-K (SEC File No. 1-09516), filed on February 10, 2005).
- 4.14 Registration Rights Agreement, dated as of February 7, 2005, among AREP, AREP Finance and AREH, and Bear, Stearns & Co. Inc. and Jefferies & Company, Inc. (incorporated by reference to Exhibit 4.11 to AREP's Form 8-K (SEC File No. 1-9516), filed on February 10, 2005).
- 10.1 Distribution Reinvestment Plan
- 10.2 Registration Rights Agreement between AREP and X LP (now known as High Coast Limited Partnership).
- 10.3 Amended and Restated Agency Agreement (incorporated by reference to Exhibit 10.12 to Form 10-K for the year ended December 31, 1994 (SEC File No. 1-9516), filed on March 31, 1995).

- 10.4 Service Mark License Agreement, by and between Becker Gaming, Inc. and Arizona Charlie's, Inc., dated as of August 1, 2000 (incorporated by reference to ACEP's Form 10-K (SEC File No. 333-118149), filed on March 16, 2005).
- 10.5 Management Agreement, dated September 12, 2001, by and between National Energy Group, Inc. ("NEG") and NEG Operating LLC (incorporated by reference to Exhibit 99.4 to NEG's Form 8-K (SEC File No. 000-19136), filed on September 27, 2001).
- 10.6 Pledge Agreement and Irrevocable Proxy, dated December 29, 2003, made by NEG in favor of Bank of Texas, N.A. (incorporated by reference to Exhibit 10.3 of NEG's Form 8-K (SEC File No. 000-19036), filed on January 14, 2004).
- 10.7 Credit Agreement, dated as of January 29, 2004, by and among ACEP, certain subsidiaries of ACEP, the several lenders from time to time parties thereto and Bear Stearns Corporate Lending Inc., as Syndication Agent and Administrative Agent (incorporated by reference to Exhibit 10.1 to ACEP's Form S-4 (SEC File No. 333-118149), filed on August 12, 2004).
- 10.8 Pledge and Security Agreement, dated as of May 26, 2004, by and among ACEP, ACEP Finance, certain subsidiaries of ACEP and Bear Stearns Corporate Lending Inc. (incorporated by reference to Exhibit 10.2 to ACEP's Form S-4 (SEC File No. 333-118149), filed on August 12, 2004).
- 10.9 Employment Agreement, effective as of April 1, 2004, by and between ACEP and Richard P. Brown (incorporated by reference to Exhibit 10.4 to ACEP's Form S-4 (SEC File No. 333-118149), filed on August 12, 2004).
- 10.10 First Amendment to Credit Agreement, dated as of January 29, 2004 by and among ACEP, as the Borrower, certain subsidiaries of the Borrower, as Guarantors, The Several Lenders, Bear Stearns Corporate Lending Inc. as Syndication Agent, and Bear Stearns Corporate Lending Inc., as Administrative Agent, dated as of May 26, 2004, Bear, Stearns & Co. Inc., as Sole Lead Arranger and Sole Bookrunner (incorporated by reference to Exhibit 10.6 to ACEP's Form S-4 (SEC File No. 333-118149), filed on October 12, 2004).
- 10.11 Management Agreement, dated November 16, 2004, by and between NEG and Panaco, Inc. ("Panaco") (incorporated by reference to Exhibit 10.13 to NEG's Form 10-Q (SEC File No. 000-19136), filed on November 15, 2004).
- 10.12 Management Agreement, dated August 28, 2003, by and between NEG and TransTexas Gas Corporation ("TransTexas") (incorporated by reference to Exhibit 10.1 to NEG's Form 8-K (SEC File No. 000-19136), filed on September 10, 2003).
- 10.13 Purchase Agreement for Notes Issued by TransTexas, dated December 6, 2004, by and between Thornwood Associates LP ("Thornwood") and AREP Oil & Gas LLC ("AREP Oil & Gas") (incorporated by reference to Exhibit 99.1 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 10, 2004).
- 10.14 Assignment and Assumption Agreement, dated December 6, 2004, by and between Thornwood and AREP Oil & Gas (incorporated by reference to Exhibit 99.2 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 10, 2004).
- 10.15 Membership Interest Purchase Agreement, dated as of December 6, 2004, by and among AREP Oil & Gas, Amos Corp., High River and Hopper Investments LLC (incorporated by reference to Exhibit 99.3 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 10, 2004).
- 10.16 Assignment and Assumption Agreement, dated December 6, 2004, by and among AREP Oil & Gas, Amos Corp., High River and Hopper Investments LLC (incorporated by reference to Exhibit 99.4 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 10, 2004).
- 10.17 Amended and Restated Oil & Gas Term Loan Agreement by and among Thornwood and TransTexas, Galveston Bay Pipeline Company and Galveston Bay Processing Corporation and Thornwood, dated August 28, 2003 (incorporated by reference to Exhibit 99.5 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 10, 2004).

- 10.18 Amended and Restated Security and Pledge Agreement, dated August 2003, by and among TransTexas, Galveston Bay Pipeline Company, Galveston Bay Processing Corporation and Thornwood (incorporated by reference to Exhibit 99.6 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 10, 2004).
- 10.19 Term Loan and Security Agreement among Panaco, Mid River LLC and Lenders Named Therein, dated as of November 16, 2004 (incorporated by reference to Exhibit 99.7 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 10, 2004).
- 10.20 Note Purchase Agreement, dated as of December 27, 2004, by and among AREP Sands Holding LLC, Barberrry Corp., and Cyprus, LLC (incorporated by reference to Exhibit 99.1 to AREP's Form 8-K (SEC File No. 1-9516), filed on December 30, 2004).
- 12.1 Ratio of Earnings to Fixed Charges.
- 21.1 Code of Business Conduct and Ethics incorporated by reference to Exhibit 99.2 to AREP's Form 10-Q for the quarter ended September 30, 2004 (SEC File No. 1-9516), filed on November 9, 2004).
- 21.6 List of Subsidiaries.
- 31.1 Certification of Principal Executive Officer pursuant to Section 302(a) of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Principal 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.
- 99.1 Corporate Governance Guidelines (incorporated by reference to Exhibit 99.1 to AREP's Form 10-Q for the quarter ended September 30, 2004 (SEC File No. 1-9516), filed on November 9, 2004).
- 99.2 Code of Business Conduct and Ethics incorporated by reference to Exhibit 99. 2 to AREP's Form 10-Q for the quarter ended September 30, 2004 (SEC File No. 1-9516), filed on November 9, 2004).

AMERICAN REAL ESTATE PARTNERS, LP  
a limited partnership  
REAL ESTATE OWNED AND REVENUES EARNED

| Part 1—Real Estate Owned at December 31, 2004—Accounted for Under the: |                     |                           |                            |                         |  |                             |   |                   |  | Part 2—Revenues earned for the<br>Ended December 31, 2004 |  |
|--|---------------------|---------------------------|----------------------------|-------------------------|--|-----------------------------|---|-------------------|--|---|--|
| State  | No. of<br>Locations | Amount of<br>Encumbrances | Initial Cost<br>to Company | Cost of<br>Improvements | Amount<br>Carried at<br>Close of<br>Period | Reserve for<br>Depreciation | Rent due and<br>Accrued or<br>Received in<br>Advance at<br>End of<br>Period | Financing Method  |  | Total<br>Revenue<br>Applicable<br>to Period               | Expanded for<br>Interest,<br>Depreciation,<br>Taxes, and<br>Other Expenses |
|  |                     |                           |                            |                         |  |                             |   | Net<br>Investment | Minimum Lease<br>Payments Due<br>and Accrued at<br>End of Period |   |  |
| COMMERCIAL PROPERTY LAND AND BUILDING                                  |                     |                           |                            |                         |  |                             |   |                   |  |   |  |
| Acme Markets, Inc. and FPBT of Penn                                    | PA                  | 1                         |                            |                         |  |                             |   |                   |  | \$ 329,559 (3)\$  | 13.7   |
| Alabama Power Company  | AL                  | 5                         |                            |                         |  |                             |   |                   |  | 44,888  | (13.6)   |
| Amer Stores, Eckert & Marbum   | NJ                  | 1                         |                            |                         |  |                             |   |                   |  | 45,454 (3)  | 8.5  |
| Atrium   | VA                  | 1                         |                            |                         |  |                             |   |                   |  | 2,002,409 (5)   | 1,682.7  |
| Best Products Co., Inc.  | VA                  | 1                         | \$ 3,376,815               | \$ (350,000)            | \$ 3,026,815                               | \$ 257,538                  |   |                   |  | 114,217   | 487.5  |
| Chesebrough-Pond's Inc.  | CT                  | 1                         |                            |                         |  |                             |   |                   |  | 54,839 (3)  | (9.0)  |
| Collins Foods International, Inc.                                      | OR                  | 3                         |                            |                         |  |                             |   |                   |  | 10,379 (3)  | 1.3  |
| Collins Foods International, Inc.                                      | CA                  | 1                         |                            |                         |  |                             |   |                   |  | 5,637 (3)   |  |
| Dillon Companies, Inc.   | MO                  | 1                         |                            |                         |  |                             |   |                   |  | 23,369 (3)  |  |
| Dragon Court   | MA                  | 1                         | 3,744,706                  | 37,571                  | 3,782,277                                  | 308,037                     |   |                   |  | 143,148   | 718.7  |
| Duke Power Co.   | NC                  | 1                         | 3,464,225                  |                         | 3,464,225                                  | 458,819                     |   |                   |  | 797,177   | 114.7  |
| Easco Corp.  | NC                  | 1                         | 1,046,012                  |                         | 1,046,012(2)                               | 66,634                      |   |                   |  | 396,250   | 8.2  |
| European American Bank and Trust Co.                                   | NY                  | 1                         |                            |                         |  |                             |   |                   |  | 159,491 (3)   | 175.0  |
| Farwell Bldg.  | MN                  | 1                         |                            |                         |  |                             |   |                   |  | 600,675 (3)   | (215.1)  |
| First National Supermarkets, Inc.                                      | CT                  | 1                         | \$ 19,576,538              |                         |  |                             |   | \$ 18,937,655     |  | 1,779,799   | 1,148.3  |
| Fisher Scientific Company  | IL                  | 1                         |                            |                         |  |                             |   |                   |  | 56,086 (3)  |  |
| Forta Hotels International, Inc.                                       | NJ                  | 1                         |                            |                         |  |                             |   |                   |  | 441,236 (3)   | 7.7  |
| Fox Grocery Company  | WV                  | 1                         | 1,919,486                  |                         | 1,919,486                                  | 13,375                      |   |                   |  | 211,197   | 13.3   |
| Gno's, Inc.  | OH                  | 1                         | 314,012                    |                         | 314,012                                    | 28,019                      |   |                   |  | 34,489  | 10.0   |
| Golf Road  | IL                  | 1                         |                            |                         |  |                             |   |                   |  | 364,321 (3)   | (9.1)  |
| Grand Union Co.  | NY                  | 1                         | 874,765                    |                         | 874,765                                    | 104,090                     | \$ 45   |                   |  | 13,828 (3)  | 1.8  |
| Grand Union Co.  | VA                  | 1                         |                            |                         |  |                             |   |                   |  | 13,828 (3)  | 1.8  |
| Whalen   | NY                  | 1                         | 7,934,020                  |                         | 7,934,020(2)                               | 226,925                     |   |                   |  | 12,050  | 813.1  |
| Gunite   | IN                  | 1                         |                            |                         |  |                             |   |                   |  | 0 (3)   | 65.8   |
| G.D. Searle & Co.  | MN                  | 1                         | 339,358                    |                         | 339,358                                    | 172,501                     | (3,083)   |                   |  | 37,000  | 2.5  |
| G.D. Searle & Co.  | IL                  | 1                         |                            |                         |  |                             |   |                   |  | 37,166 (3)  | 8.5  |
| Integra A Hotel and Restaurant Co.                                     | AL                  | 2                         |                            |                         |  |                             |   |                   |  | 127,984 (3)   | 2.6  |
| Integra A Hotel and Restaurant Co.                                     | IN                  | 1                         |                            |                         |  |                             |   |                   |  | 45,272 (3)  | 2  |
| Integra A Hotel and Restaurant Co.                                     | OH                  | 1                         |                            |                         |  |                             |   |                   |  | 39,770 (3)  |  |
| Integra A Hotel and Restaurant Co.                                     | MO                  | 1                         | 414,887                    |                         | 414,887                                    | 17,105                      |   |                   |  | 91,818  | 10.3   |
| Integra A Hotel and Restaurant Co.                                     | TX                  | 1                         | 438,097                    | (2,616)                 | 435,481(2)                                 | 16,744                      |   |                   |  | 103,960   |  |
| Integra A Hotel and Restaurant Co.                                     | MI                  | 1                         |                            |                         |  |                             |   |                   |  | 62,475 (3)  | 2  |
| Intermountain Color  | KY                  | 1                         | 560,444                    |                         | 560,444                                    | 523,715                     |   |                   |  | 97,802  | 5.4  |
| J.C. Penney Company, Inc.  | MA                  | 1                         | 2,484,262                  |                         | 2,484,262                                  | 1,987,410                   | (41,707)  |                   |  | 250,244   | 3.8  |
| Kings Buffet   | FL                  | 1                         | 910,425                    |                         | 910,425                                    | 42,803                      | (279)   |                   |  | 117,000   | 39.0   |
| K-Mart Corporation   | LA                  | 1                         |                            |                         |  |                             |   |                   |  | 0   | 31.3   |
| K-Mart Corporation   | WI                  | 1                         |                            |                         |  |                             |   |                   |  | 0 (3)   | 65.8   |
| K-Mart Corporation   | MN                  | 1                         |                            |                         |  |                             |   |                   |  | 0 (3)   | 65.3   |
| K-Mart Corporation   | IA                  | 1                         |                            |                         |  |                             |   | 973,484           |  | 93,963  | 26.4   |
| K-Mart Corporation   | FL                  | 1                         | 2,636,000                  |                         | 2,636,000(2)                               | 1,899,765                   |   |                   |  | 251,420   | 6.8  |
| K-Mart Corporation   | IL                  | 1                         | 600,000                    |                         | 600,000                                    | 31,732                      |   |                   |  | 0   | 7  |
| K-Mart Corporation   | IL                  | 1                         | 600,000                    |                         | 600,000                                    | 31,732                      |   |                   |  | 62,322  | 58.8   |
| Kobacker Stores, Inc.  | MI                  | 2                         | 112,225                    |                         | 112,225                                    |                             | 1,068   | 106,341           | \$ 2,412   | 24,142  | 4  |
| Kobacker Stores, Inc.  | KY                  | 1                         | 88,364                     |                         | 88,364                                     |                             | 769   | 64,103            | 1,115  | 15,853  | 2  |
| Kobacker Stores, Inc.  | OH                  | 4                         | 198,031                    |                         | 198,031                                    |                             | 1,851   | 187,753           | 4,117  | 48,933  | 4  |
| Landmark Bianchessi Corporation  | MO                  | 1                         |                            |                         |  |                             |   | 3,303,464         |  | 482,092   |  |
| Louisiana Power and Light Company                                      | LA                  | 6                         | 5,636,053                  |                         | 5,636,053                                  | 637,447                     |   |                   |  | 1,240,853   | 154.2  |
| Louisiana Power and Light Company                                      | LA                  | 7                         | 7,015,989                  |                         | 7,015,989                                  | 727,786                     |   |                   |  | 1,299,275   | 174.6  |
| Marsh Supermarkets, Inc.   | IN                  | 1                         | 5,001,933                  |                         | 5,001,933                                  | 3,229,039                   |   |                   |  | 506,300   | 131.4  |
| Mid-South  | TN                  | 1                         |                            |                         |  |                             |   |                   |  | 771,125 (3)   | 535.1  |
| Montgomery Ward, Inc.  | PA                  | 1                         |                            |                         |  |                             |   |                   |  | 156,267 (3)   | (12.2)   |

AMERICAN REAL ESTATE PARTNERS, LP  
a limited partnership  
REAL ESTATE OWNED AND REVENUES EARNED

Part 2—Revenues earned for the Year  
Ended  
December 31, 2004

Part 1—Real Estate Owned at December 31, 2004—Accounted for Under the:

| Operating Method   |                  |                        |                         |                      |                                   | Financing Method         |  |                |   |                                    |  |                                 |
|--|------------------|------------------------|-------------------------|----------------------|-----------------------------------|--------------------------|--|----------------|---|------------------------------------|--|---------------------------------|
| State  | No. of Locations | Amount of Encumbrances | Initial Cost to Company | Cost of Improvements | Amount Carried at Clost of Period | Reserve for Depreciation | Rent Due and Accrued or Received in Advance at End of Period | Net Investment | Minimum Lease Payments Due and Accrued at End of Period | Total Revenue Applicable to Period | Expanded for Interest, Depreciation, Taxes, and Other Expenses | Net Income Applicable to Period |
|  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| COMMERCIAL PROPERTY LAND AND BUILDING  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Montgomery Ward, Inc NJ 1 113,765 (3) 3,227 (3) 110,538  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Morrison, Inc AL 1 0 (3) 44,213 (3) (44,213)   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Morrison, Inc GA 1 91,680 29,053 62,627  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Morrison, Inc VA 1 904,766 904,766(2) 32,502 0 39,460 (39,460)                                     |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Morrison, Inc VA 1 861,134 861,134 46,236 0 21,793 (21,793)  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| North Carolina National Bank SC 2 1,450,047 1,450,047 671,374 56,238 80,407 (24,169)               |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| North Carolina National Bank SC 1 153,365 153,365(2) 103,365 0 3,851 (3,851)                       |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Occidental Petroleum Corp CA 1 0 38 (38)   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Ohio Power Co. Inc OH 1 3,053,550 290,655 0 290,655  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Park West KY 1 641,691 (3) 428,744 (3) 212,947   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Park West UPS KY 1 932,538 (3) 596,187 (3) 336,351   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Penske Corp OH 1 0 (3) 65,756 (3) (65,756)   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Pneumo Corp OH 1 1,629,713 1,629,713 123,285 243,750 54,793 188,957                                |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Portland General Electric Company OR 1 31,096,664 45,903,530 3,984,278 2,526,316 1,457,962         |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Rayovac WI 1 14,855,137 22,065,852 22,065,852(2) 2,243,143 2,788,657 1,224,533 1,564,124           |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Safeway Stores, Inc LA 1 48,984 (3) 1,545 (3) 47,439   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Sams MI 1 8,844,225 8,844,225(2) 2,380,429 1,245,569 4,241 1,241,328                               |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Smith's Management Corp NV 1 0 810 (810)   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Southland Corporation FL 4 862,367 862,367 516,348 100,359 3,313 97,046                            |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Staples NY 1 136,332 (3) 21,304 (3) 115,028  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Stone Container WI 1 5,696,064 9,028,574 9,028,574(2) 1,526,831 (75,748) 903,041 670,448 232,593   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Stop & Shop NY 1 137,100 (3) 0 (3) 137,100   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Stop & Shop NJ 1 55,565 (3) 45 (3) 55,520  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Stop 'N Shop Co., Inc VA 1 2,158,099 2,158,099 115,294 109,255 207,934 (98,679)                    |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Super Foods Services, Inc MI 1 3,819,320 8,303,219 895,025 356,606 538,419                         |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Telecom Properties, Inc OK 1 0 506 (506)   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Telecom Properties, Inc KY 1 340,321 340,321 3,544 36,000 3,686 32,314                             |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| The A&P Company MI 1 0 (3) 72,842 (3) (72,842)   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Tire Distribution Systems Inc TN 1 4,583 (3) 150 (3) 4,433   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Tops Market NY 1 262,357 262,357 30,311 (15,727) 31,453 6,062 25,391                               |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Toys "R" Us, Inc TX 1 0 5,077 (5,077)  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Waban NY 1 261,122 (3) 22,972 (3) 238,150  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Wetterau, Inc PA 1 400,000 400,000(2) 0 44,785 (44,785)  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Wetterau, Inc NJ 1 747,116 747,116 57,759 150,800 25,671 125,129                                   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Wickes Companies, Inc CA 1 66,565 (3) (12,192)(3) 78,757   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| RESIDENTIAL PROPERTY LAND AND BUILDING   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| (1)  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Crown Cliffs AL 1 6,926,225 11,550,899 112,579 11,663,478(2) 4,107,054 2,078,098 1,650,167 427,931 |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| COMMERCIAL PROPERTY—LAND   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Foodarama Supermarkets, Inc NY 1 13,232 (3) 4,002 (3) 9,230  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Foodarama Supermarkets, Inc PA 1 12,000 (3) 4,002 (3) 7,998  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Gino's, Inc PA 1 6,751 (3) 4,002 (3) 2,749   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Gino's, Inc MA 1 6,751 (3) 4,002 (3) 2,749   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| Gino's, Inc NJ 1 6,751 (3) 4,002 (3) 2,749   |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |
| J.C. Penney Company, Inc NY 1 917 (3) 0 (3) 917  |                  |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |

AMERICAN REAL ESTATE PARTNERS, LP  
a limited partnership  
REAL ESTATE OWNED AND REVENUES EARNED

Part 2—Revenues earned for the Year Ended  
December 31, 2004

Part 1—Real Estate Owned at December 31, 2004—Accounted for Under the:

|  | Operating Method       |                        |                         |                      |                                   |                          | Financing Method   |                |   |                                    |  |                                 |              |
|--|------------------------|------------------------|-------------------------|----------------------|-----------------------------------|--------------------------|--|----------------|---|------------------------------------|--|---------------------------------|--------------|
|  | No. of State Locations | Amount of Encumbrances | Initial Cost to Company | Cost of Improvements | Amount Carried at Close of Period | Reserve for Depreciation | Rent Due and Accrued or Received in Advance at End of Period | Net Investment | Minimum Lease Payments Due and Accrued at End of Period | Total Revenue Applicable to Period | Expanded for Interest, Depreciation, Taxes, and Other Expenses | Net Income Applicable to Period |              |
| COMMERCIAL PROPERTY LAND AND BUILDING    |                        |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |              |
| COMMERCIAL PROPERTY—BUILDING             |                        |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |              |
| AT&T                                     | CA                     | 1                      | 2,569,705               | 2,830                | 2,572,535                         | (2)                      | 82,237   |                |   | 462,931                            | 153,631  | 309,300                         |              |
| Bank of America                          | GA                     | 1                      |                         |                      |                                   |                          |  | 2,581,575      |   | 265,158                            | 23,000   | 242,158                         |              |
| Baptist Hospital 1                       | TN                     | 1                      |                         |                      |                                   |                          |  |                |   | 614,762                            | 506,345  | 108,417                         |              |
| Baptist Hospital 2                       | TN                     | 1                      |                         |                      |                                   |                          |  |                |   | 228,172                            | 184,120  | 44,052                          |              |
| Harwood Square                           | IL                     | 1                      | 6,952,206               | 257,158              | 7,209,364                         | (2)                      | 4,186,890  |                |   | 795,016                            | 57,952   | 737,064                         |              |
| Safeway Stores, Inc                      | CA                     | 1                      |                         |                      |                                   |                          |  |                |   | 13,885                             | (3)  | 13,885                          |              |
| Toys "R" Us, Inc                         | RI                     | 1                      |                         |                      |                                   |                          |  | 745,050        | 10,430  | 72,394                             | 0  | 72,394                          |              |
| United Life & Accident Ins. Co           | NH                     | 1                      |                         |                      |                                   |                          |  | 2,894,284      | (43,667)  | 252,370                            | 5,207  | 247,163                         |              |
| Wickes Companies, Inc                    | PA                     | 1                      |                         |                      |                                   |                          |  | 2,138,678      |   | 527,221                            | 902  | 526,319                         |              |
| North Moore                              | NY                     | 1                      | 9,925,579               | 14,583,060           | 14,583,060                        |                          | 416,659  | (49,172)       |   | 1,122,237                          | 1,110,043  | 12,194                          |              |
|  |                        |                        | 91,895,527              | 119,890,855          | 14,640,582                        | 134,531,437              | 27,392,745   | (181,983)      | 89,192,686  | (25,593)                           | 33,514,240   | 16,644,625                      | 16,869,615?  |
| LESS HELD FOR SALE—OPERATING REAL ESTATE |                        |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |              |
|  |                        |                        | (27,477,426)            | (74,523,721)         | (369,951)                         | (74,893,672)             | (16,872,519)   |                |   | (15,657,963)                       | (8,085,219)  | 57,572,744                      |              |
|  |                        |                        | 64,418,101              | 45,367,134           | 14,270,631                        | 59,637,765               | 10,520,226   | (181,983)      | 89,192,686  | (25,593)                           | 17,856,277   | 8,559,406                       | 9,296,871    |
| LESS CURRENT PORTION                     |                        |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |              |
|  |                        |                        | (3,700,000)             |                      |                                   |                          |  | (3,912,000)    |   |                                    |  |                                 |              |
| HOTEL AND RESORT OPERATING PROPERTIES    |                        |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |              |
| New Seabury                              | MA                     |                        | 37,087,739              | 954,952              | 38,042,691                        |                          | 9,148,267  |                |   | 9,848,167                          | 10,056,181   | (208,014)                       |              |
| Holiday Inn                              | FL                     |                        |                         |                      |                                   |                          |  |                |   | 1,602,255                          | (3)  | 304,538                         |              |
| Bayswater                                | FL                     |                        | 5,310,365               | 79,105               | 5,389,470                         |                          | 719,824  |                |   | 3,002,000                          | 2,618,000  | 384,000                         |              |
| Grand Harbor                             | FL                     |                        |                         | 16,893,964           | 16,893,964                        |                          | 326,262  |                |   | 5,626,869                          | 7,169,226  | (1,542,357)                     |              |
|  |                        |                        | 0                       | 42,398,104           | 17,928,021                        | 60,326,125               | 10,194,353   | 0              | 0   | 0                                  | 20,079,291   | 21,141,124                      | (1,061,833)  |
| LESS HELD FOR SALE—HOTEL AND RESORT      |                        |                        |                         |                      |                                   |                          |  |                |   |                                    |  |                                 |              |
|  |                        |                        |                         |                      |                                   |                          |  |                |   | (3,868,700)                        | (3,942,003)  | 73,303                          |              |
|  |                        |                        | \$ 60,718,101           | \$ 87,765,238        | \$ 32,198,652                     | \$ 119,963,890           | \$ 20,714,579  | \$(181,983)    | \$ 85,280,686   | \$ (25,593)                        | \$ 34,066,868  | \$ 25,758,527                   | \$ 8,308,341 |

(1) The Company owns a 70% interest in the joint venture which owns this property.

(2) Such properties are being classified as held for sale at 12/31/04.

(3) Sold in 2004 and included in discontinued operations.

**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**

**REAL ESTATE OWNED AND REVENUES EARNED**

**Year Ended December 31, 2004 (in \$000's)**

1a. A reconciliation of the total amount at which real estate owned, accounted for under the operating method and hotel and resort operating properties, was carried at the beginning of the period, with the total at the close of the period, is shown below:

|   |    |          |
|---|----|----------|
| Balance—January 1, 2004                                 | \$ | 161,158  |
| Additions during period                                 |    | 32,866   |
| Reclassifications during period from financing leases   |    | 1,919    |
| Write downs   |    | (350)    |
| Reclassifications during period to assets held for sale |    | (74,720) |
| Disposals during period                                 |    | (909)    |
|   |    | <hr/>    |
| Balance—December 31, 2004                               | \$ | 119,964  |
|   |    | <hr/>    |

b. A reconciliation of the total amount of accumulated depreciation at the beginning of the period, with the total at the close of the period, is shown below:

|   |    |          |
|---|----|----------|
| Balance—January 1, 2004                                 | \$ | 43,189   |
| Depreciation during period                              |    | 5,274    |
| Disposals during period                                 |    | (42)     |
| Reclassifications during period to assets held for sale |    | (27,706) |
|   |    | <hr/>    |
| Balance—December 31, 2004                               | \$ | 20,715   |
|   |    | <hr/>    |

Depreciation on properties accounted for under the operating method is computed using the straight-line method over the estimated life of the particular property or property components, which range from 20 to 45 years.

2. A reconciliation of the total amount at which real estate owned, accounted for under the financing method, was carried at the beginning of the period, with the total at the close of the period, is shown below:

|   |    |          |
|---|----|----------|
| Balance—January 1, 2004                                 | \$ | 137,356  |
| Reclassifications during period to operating properties |    | (1,919)  |
| Disposals during period                                 |    | (42,044) |
| Amortization of unearned income                         |    | 9,880    |
| Minimum lease rentals received                          |    | (14,080) |
|   |    | <hr/>    |
| Balance—December 31, 2004                               | \$ | 89,193   |
|   |    | <hr/>    |

3. The aggregate cost of real estate owned for Federal income tax purposes is \$209,193 before accumulated depreciation.



4. Net income applicable to the period in Schedule III is reconciled with net earnings as follows:

|   |                   |
|---|-------------------|
| Net income applicable to financing and operating leases and hotel and resort operating properties | \$ 8,308          |
| Net income applicable to hotel and casino operations  | 36,649(1)         |
| Net income applicable to land, house and condominium sales  | 6,355             |
| Net income applicable to oil and gas operations   | 28,186(2)         |
| Add:  |                   |
| Interest income on U.S. Government and Agency Obligations and other investments                   | 44,418            |
| Dividend and unallocated other income   | 3,133             |
|   | <u>127,049</u>    |
| Deduct expenses not allocated:  |                   |
| General and administrative expenses   | 9,806             |
| Non-mortgage interest expense   | 37,195            |
| Other   | 7,974             |
|   | <u>54,975</u>     |
| Operating income after income taxes   | <u>72,074</u>     |
| Gain on sale of marketable equity and debt securities   | 40,159            |
| Gain on sale of real estate   | 5,262             |
| Impairment loss on equity interest in GB Holdings, Inc  | (15,600)          |
| Unrealized losses in securities sold sort   | (23,619)          |
| Income from continuing operations   | <u>78,276</u>     |
| Discontinued Operations:  |                   |
| Total Income from discontinued operations   | <u>82,697</u>     |
| Net Earnings  | <u>\$ 160,973</u> |

(1) Includes depreciation expense of \$23,516 and \$10,100 of income tax expense.

(2) Includes income tax expense of \$6,663.

**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**

**REAL ESTATE OWNED AND REVENUES EARNED**

**Year Ended December 31, 2003 (in \$000's)**

1a. A reconciliation of the total amount at which real estate owned, accounted for under the operating method and hotel and resort operating properties was carried at the beginning of the period, with the total at the close of the period, is shown below:

|   |    |           |
|---|----|-----------|
| Balance—January 1, 2003                               | \$ | 303,460   |
| Additions during period                               |    | 1,675     |
| Reclassifications during period from financing leases |    | 5,065     |
| Reclassifications during period to held for sale      |    | (146,416) |
| Disposals during period                               |    | (2,626)   |
|   |    | <hr/>     |
| Balance December 31, 2003                             | \$ | 161,158   |
|   |    | <hr/>     |

b. A reconciliation of the total amount of accumulated depreciation at the beginning of the period, with the total at the close of the period, is shown below:

|  |    |          |
|--|----|----------|
| Balance—January 1, 2003                          | \$ | 54,978   |
| Depreciation during period                       |    | 8,605    |
| Reclassifications during period to held for sale |    | (20,153) |
| Disposals during period                          |    | (241)    |
|  |    | <hr/>    |
| Balance—December 31, 2003                        | \$ | 43,189   |
|  |    | <hr/>    |

Depreciation on properties accounted for under the operating method is computed using the straight-line method over the estimated useful life of the particular property or property components, which range from 5 to 45 years.

2. A reconciliation of the total amount at which real estate owned, accounted for under the financing method, was carried at the beginning of the period, with the total close of the period, is shown below:

|   |    |          |
|---|----|----------|
| Balance—January 1, 2003                                 | \$ | 155,458  |
| Reclassifications during period to operating properties |    | (5,065)  |
| Disposals during period                                 |    | (7,708)  |
| Amortization of unearned income                         |    | 13,115   |
| Minimum lease rentals received                          |    | (18,444) |
|   |    | <hr/>    |
| Balance—December 31, 2003                               | \$ | 137,356  |
|   |    | <hr/>    |

3. The aggregate cost of real estate owned for Federal income tax purposes is \$377,539 before accumulated depreciation.

4. Net income applicable to the period in Schedule III is reconciled with net earnings as follows:

|   |                  |
|---|------------------|
| Net income applicable to financing and operating leases and hotel and resort operating properties | \$ 12,397        |
| Net income applicable to hotel and casino operations  | 24,064(1)        |
| Net income applicable to land, house and condominium sales  | 4,136            |
| Net income applicable to NEG, Inc.  | 19,522(2)        |
| Add:  |                  |
| Interest income on U.S. Government and Agency Obligations and other investments                   | 22,583           |
| Dividend and unallocated other income   | 3,061            |
|   | <u>85,763</u>    |
| Deduct expenses not allocated:  |                  |
| General and administrative expenses   | 6,850            |
| Nonmortgage interest expense  | 2,449            |
| Other   | 5,912            |
|   | <u>15,211</u>    |
| Operating income after income taxes   | 70,552           |
| Gain on sale of real estate   | 7,121            |
| Write down of marketable equity and debt securities and other investments                         | (19,759)         |
| Loss on sale of other assets  | (1,503)          |
| Gain on sale of marketable equity and debt securities   | 2,607            |
| Income from continuing operations   | <u>59,018</u>    |
| Total income from discontinued operations   | <u>11,006</u>    |
| Net earnings  | <u>\$ 70,024</u> |

(1) Includes depreciation expense of \$20,222 and income tax benefit of \$1,798.

(2) Includes income tax expense of \$225 and interest expense of \$11,165.

1a. A reconciliation of the total amount at which real estate owned, accounted for under the operating method and hotel and resort operating properties, was carried at the beginning of the period, with the total at the close of the period, is shown below:

|   |            |
|---|------------|
| Balance—January 1, 2002                               | \$ 273,887 |
| Additions during period                               | 20,886     |
| Reclassifications during period from financing leases | 13,503     |
| Write downs   | (1,992)    |
| Disposals during period                               | (2,824)    |
|   | <hr/>      |
| Balance—December 31, 2002                             | \$ 303,460 |
|   | <hr/>      |

b. A reconciliation of the total amount of accumulated depreciation at the beginning of the period, with the total at the close of the period, is shown below:

|                            |           |
|----------------------------|-----------|
| Balance—January 1, 2002    | \$ 48,057 |
| Depreciation during period | 7,105     |
| Disposals during period    | (184)     |
|                            | <hr/>     |
| Balance—December 31, 2002  | \$ 54,978 |
|                            | <hr/>     |

Depreciation on properties accounted for under the operating method is computed using the straight-line method over the estimated useful life of the particular property or property components, which range from 7 to 45 years.

2. A reconciliation of the total amount at which real estate owned, accounted for under the financing method, was carried at the beginning of the period, with the total close of the period, is shown below:

|                                 |            |
|---------------------------------|------------|
| Balance—January 1, 2002         | \$ 176,757 |
| Reclassification during period  | (13,503)   |
| Write downs                     | (257)      |
| Disposals during period         | (1,560)    |
| Amortization of unearned income | 14,722     |
| Minimum lease rentals received  | (20,663)   |
| Other                           | (38)       |
|                                 | <hr/>      |
| Balance—December 31, 2002       | \$ 155,458 |
|                                 | <hr/>      |

3. The aggregate cost of real estate owned for Federal income tax purposes is \$382,208 before accumulated depreciation.

4. Net income applicable to the period in Schedule III is reconciled with net earnings as follows:

|   |                  |
|---|------------------|
| Net income applicable to financing and operating leases and hotel and resort operating properties | \$ 13,198        |
| Net income applicable to hotel and casino operations  | 6,845(1)         |
| Net income applicable to land, house and condominium sales  | 20,384           |
| Net income applicable to NEG Inc.   | 9,415(2)         |
| Add:  |                  |
| Interest income on U.S. Government and Agency Obligations and other investments                   | 30,569           |
| Dividend and unallocated other income   | 2,720            |
|   | <u>83,131</u>    |
| Deduct expenses not allocated:  |                  |
| General and administrative expenses   | 7,029            |
| Non-mortgage interest expense   | 5,306            |
| Other   | 1,505            |
|   | <u>13,840</u>    |
| Operating income after income taxes   | 69,291           |
| Gain on sale of real estate   | 8,990            |
| Write down of equity securities   | (8,476)          |
| Loss on sale of other assets  | (353)            |
| Loss on limited partnership interests   | (3,750)          |
| Minority interest in net earnings of Stratosphere Corporation                                     | (1,943)          |
|   | <u>63,759</u>    |
| Income from continuing operations   | 63,759           |
| Total income from discontinued operations   | <u>6,937</u>     |
| Net earnings  | <u>\$ 70,696</u> |

(1) Includes depreciation expense of \$20,209 and income tax expense of \$4,970.

(2) Includes income tax expense of \$5,068 and interest expense of \$18,964.

**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**  
**REAL ESTATE OWNED AND RESERVED FOR DEPRECIATION BY STATE**  
**(Accounted for Under the Operating Method)**  
**December 31, 2004 (in 000's)**

| State          | Amount at Which<br>Carried at Close<br>of Year | Reserve for<br>Depreciation |
|----------------|--|-----------------------------|
| Florida        | \$ 24,057                                      | \$ 1,606                    |
| Illinois       | 600  | 32                          |
| Indiana        | 5,002  | 3,229                       |
| Kentucky       | 989  | 527                         |
| Louisiana      | 12,621   | 1,365                       |
| Massachusetts  | 44,310   | 11,444                      |
| Michigan       | 112  | 0                           |
| Minnesota      | 339  | 173                         |
| Missouri       | 415  | 17                          |
| New Jersey     | 747  | 58                          |
| New York       | 15,751   | 551                         |
| North Carolina | 3,464  | 459                         |
| Ohio           | 2,142  | 151                         |
| South Carolina | 1,450  | 671                         |
| Virginia       | 6,046  | 419                         |
| West Virginia  | 1,919  | 13                          |
|                | <u>\$ 119,964</u>                              | <u>\$ 20,715</u>            |

AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES

REAL ESTATE OWNED BY STATE  
(Accounted for Under the Financing Method)  
December 31, 2004 (in \$000's)

| State         | Net Investment |
|---------------|----------------|
| Connecticut   | \$ 18,938      |
| Georgia       | 2,583          |
| Iowa          | 973            |
| Kentucky      | 64             |
| Michigan      | 8,410          |
| Missouri      | 3,303          |
| New Hampshire | 2,894          |
| Ohio          | 3,241          |
| Oregon        | 45,903         |
| Pennsylvania  | 2,139          |
| Rhode Island  | 745            |
|               | <hr/>          |
|               | \$ 89,193      |

**AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES**  
**RATIO OF EARNINGS TO FIXED CHARGES**  
**(AMOUNTS IN THOUSANDS)**

Years Ended December 31,

|   | 2004       | 2003      | 2002       | 2001       | 2000      |
|---|------------|-----------|------------|------------|-----------|
| Income from continuing operations before income taxes, income or loss from equity investees and minority interest | \$ 96,129  | \$ 60,145 | \$ 74,923  | \$ 71,169  | \$ 77,502 |
| Fixed Charges:  |            |           |            |            |           |
| Interest Expense  | \$ 46,099  | \$ 21,103 | \$ 27,297  | 36,577     | \$ 20,057 |
| Amortized capitalized expenses related to indebtedness  | \$ 2,400   | \$ 320    | \$ 191     | \$ 178     | \$ 222    |
| Estimated interest within rental expense  | \$ 128     | \$ 122    | \$ 124     | \$ 103     | \$ 100    |
| Earnings as defined   | \$ 144,756 | \$ 81,690 | \$ 102,535 | \$ 108,027 | \$ 97,881 |
| Fixed Charges (including capitalized terms):  |            |           |            |            |           |
| Interest Expense  | \$ 46,099  | \$ 21,103 | \$ 27,297  | \$ 36,577  | \$ 20,057 |
| Amortized capitalized expense related to indebtedness   | \$ 2,400   | \$ 320    | \$ 191     | \$ 178     | \$ 222    |
| Estimated interest within rental expense  | \$ 128     | \$ 122    | \$ 124     | \$ 103     | \$ 100    |
| Fixed charges as defined  | \$ 48,627  | \$ 21,545 | \$ 27,612  | \$ 36,858  | \$ 20,379 |
| Ratio of earnings to fixed charges  | 3.0        | 3.8       | 3.7        | 2.9        | 4.8       |



QuickLinks

[EXHIBIT 99.4](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES REAL ESTATE OWNED AND RESERVED FOR DEPRECIATION BY STATE \(Accounted for Under the Operating Method\) December 31, 2004 \(in 000's\)](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES REAL ESTATE OWNED BY STATE \(Accounted for Under the Financing Method\) December 31, 2004 \(in \\$000's\)](#)

[Exhibit 12.1](#)

[AMERICAN REAL ESTATE PARTNERS, L.P. AND SUBSIDIARIES RATIO OF EARNINGS TO FIXED CHARGES \(AMOUNTS IN THOUSANDS\)](#)