

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**Form S-3**  
**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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

*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or other jurisdiction of  
 incorporation or organization)*

**13-3398766**  
*(I.R.S. Employer  
 Identification Number)*

**AMERICAN REAL ESTATE FINANCE CORP.**

*(Exact name of registrant as specified in its charter)*

**Delaware**  
*(State or Other Jurisdiction of  
 Incorporation or Organization)*

**20-1059842**  
*(I.R.S. Employer  
 Identification number)*

**100 South Bedford Road  
 Mt. Kisco, New York 10549  
 (914) 242-7700**

*(Address, including zip code, and telephone number, including area code, of registrants' principal executive offices)*

**Jon F. Weber  
 President**

**100 South Bedford Road  
 Mt. Kisco, New York 10549  
 (914) 242-7700**

*(Name, address, including zip code, and telephone number, including area code, of agent for service)*

**With copies to:**

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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee(3)
Depository units(3)				
Preferred units(3)				
Debt securities(3)				
Warrants(3)				
<b>Total</b>			<b>\$1,000,000,000</b>	<b>\$117,700</b>

(1) Not applicable pursuant to Form S-3 General Instruction II(D).

(2) Estimated solely for the purpose of determining the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, and based upon the maximum aggregate offering price of all securities being registered.

(3) Such indeterminate number as may from time to time be issued at indeterminate prices registered hereunder.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant will file a further amendment which specifically states that this Registration Statement will thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement will become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

The information in this prospectus is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED JUNE 23, 2005**

**PRELIMINARY PROSPECTUS**

**\$1,000,000,000**

**AMERICAN REAL ESTATE PARTNERS, L.P.  
AMERICAN REAL ESTATE FINANCE CORP.**

**Depository Units Representing Limited Partnership Interests  
Preferred Units Representing Limited Partnership Interests  
Debt Securities  
Warrants to Purchase Debt Securities, Preferred Units or Depository Units**

We will provide the specific terms for each of these securities in supplements to this prospectus. You should read carefully this prospectus and any supplement before you invest.

Our depository units are listed on the New York Stock Exchange under the symbol "ACP".

**This Prospectus may not be used to complete sales of securities unless it is accompanied by a prospectus supplement.**

**Investing in our securities involve a high degree of risk. See "Risk Factors" beginning on page 3.**

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The date of this prospectus is \_\_\_\_\_, 2005.

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You should rely only on the information contained in this document or to which we have referred you. We have not authorized anyone to provide you with information that is different. This document may only be used where it is legal to sell securities. The information in this document

may only be accurate on the date of this document.

## **FORWARD-LOOKING INFORMATION**

This prospectus and the information incorporated herein by reference contain forward-looking statements. These forward-looking statements are not historical facts, but rather our beliefs and expectations are based on our current expectations, estimates, projections, beliefs and assumptions about our company and industry. Words such as “anticipates,” “expects,” “intends,” “plans,” “believes,” “seeks,” “estimates” and similar expressions are intended to identify forward-looking statements. These statements are not guarantees of future performance and are subject to risks, uncertainties and other factors, some of which are beyond our control, are difficult to predict and could cause actual results to differ materially from those expressed or forecasted in the forward-looking statements. These risks include those set forth in the section of this prospectus called “Risk Factors.”

Those risks are representative of factors that could affect the outcome of the forward-looking statements. These and the other factors discussed elsewhere in this prospectus and the documents incorporated by reference herein are not necessarily all of the important factors that cause our results to differ materially from those expressed in our forward-looking statements. We caution you not to place undue reliance on these forward-looking statements, which reflect our view only as of the respective dates of this prospectus and the documents incorporated herein by reference or other dates which are specified in those documents.

## OUR COMPANY

American Real Estate Partners, L.P., or AREP, is a master limited partnership formed in Delaware on February 17, 1987. We are a diversified holding company engaged in a variety of businesses.

Our core businesses currently include oil and gas exploration and production; casino gaming and associated hotel, restaurant and entertainment operations; real estate activities including commercial rentals, residential development and associated resort activities; and investments in equity and debt securities. We may also seek opportunities in other sectors, including energy, asset-intensive industrial manufacturing and processing business, and insurance and asset management.

Our primary business strategy is to continue to grow and enhance the value of our core businesses. In addition, we seek to acquire undervalued assets and companies that are distressed or in out of favor industries.

Our general partner is American Property Investors, Inc., the general partner, or API, a Delaware corporation, which is indirectly wholly owned by Carl C. Icahn. Our business is conducted through a subsidiary limited partnership, American Real Estate Holdings Limited Partnership, or AREH, in which we own a 99% limited partnership interest, and its subsidiaries. API also acts as the general partner for AREH. API has a 1% general partnership interest in each of us and AREH. As of May 1, 2005, affiliates of Mr. Icahn beneficially owned 39,896,836 units representing AREP limited partner interests, or the depositary units, representing approximately 86.5% of the outstanding depositary units, and 9,346,044 cumulative pay-in-kind redeemable preferred units, representing AREP limited partner interests, or the preferred units, representing approximately 86.5% of the outstanding preferred units.

Our depositary units, representing limited partnership interests, trade on the New York Stock Exchange under the symbol "ACP."

As used in this prospectus, "we," "us," "our," "company" and AREP mean American Real Estate Partners, L.P., and, unless the context indicates otherwise, includes our subsidiaries.

Our principal executive offices are located at 100 South Bedford Road, Mt. Kisco, New York 10549. Our phone number is (914) 242-7700.

American Real Estate Finance Corp., or AREP Finance, a Delaware corporation, is our wholly-owned subsidiary. AREP Finance was incorporated on April 19, 2004 and was formed solely for the purpose of serving as a co-issuer of debt securities of AREP. AREP Finance does not and will not have any operations or assets and will not have any revenues. AREP Finance's principal business address is 100 South Bedford Road, Mt. Kisco, New York 10549 and its telephone number is (914) 242-7700.

### RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges for the periods indicated. For purposes of computing the ratio of earnings to fixed charges, earnings represent earnings from continuing operations before income taxes, equity in earnings (loss) of investees and minority interest plus fixed charges. Fixed charges include (a) interest on indebtedness (whether expensed or capitalized), (b) amortization of debt discounts and premiums and capitalized expenses related to indebtedness and (c) the portion of rent expense we believe to be representative of interest. The ratio of earnings to fixed charges is also presented for AREP's supplemental consolidated financial statements for the periods indicated. AREP's supplemental consolidated financial statements were filed on Form 8-K, dated June 3, 2005, giving effect to the acquisition of TransTexas Gas Corporation on April 6, 2005.

	Three Months Ended March 31, 2005	Years Ended December 31,				
		2004	2003	2002	2001	2000
Ratio of earnings to fixed charges — historical	<u>3.4</u>	<u>3.0</u>	<u>3.8</u>	<u>3.7</u>	<u>2.9</u>	<u>4.8</u>
Ratio of earnings to fixed charges — supplemental	<u>3.0</u>	<u>2.9</u>	<u>3.0</u>	<u>3.7</u>	<u>2.9</u>	<u>4.8</u>

### ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC using a "shelf" registration process. Under this shelf process, we may offer, from time to time, in one or more offerings:

- depositary units;
- preferred units;
- debt securities; or
- warrants to purchase our debt securities, depositary units or preferred units.

The total offering price of these securities will not exceed \$1,000,000,000.

This prospectus provides you with a general description of the securities we may offer. Each time we offer securities, we will provide you with a prospectus supplement that will describe the specific amounts, prices and terms of the securities we offer. The prospectus supplement also may add, update or change information contained in this prospectus.

We may sell the securities to or through underwriters, dealers or agents or directly to purchasers. We and our agents reserve the sole right to accept and to reject in whole or in part any proposed purchase of securities. The prospectus supplement, which we will provide to you each time we offer securities, will provide the names of any underwriters, dealers or agents involved in the sale of the securities, and any applicable fee, commission or discount arrangements with them. See "Plan of Distribution."

## RISK FACTORS

Investing in our securities involves risks that could affect us and our business as well as the industries in which we operate and invest. Before purchasing our securities, you should carefully consider the following risks and the other information in this prospectus and the applicable prospectus supplement, as well as the documents incorporated by reference herein. Each of the risks described could result in a decrease in the value of our securities and your investment in them.

### 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, Mr. Icahn, and our 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 \$23.7 million on an ongoing actuarial basis and \$175.4 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 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, as amended. 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 our debt securities.

***Our general partner and its control person could exercise their influence over us to your detriment.***

Mr. Icahn, through affiliates, currently owns 100% of API, our general partner, and approximately 86.5% of our outstanding depositary units and cumulative pay in kind preferred units, and, as a result, has

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and will have the ability to influence many aspects of our operations and affairs. API also is the general partner of AREH.

We may invest in entities in which Mr. Icahn also invests or purchase investments from him or his affiliates. Although API has never received fees in connection with our investments, our partnership agreement allows for the payment of these fees. Mr. Icahn may pursue other business opportunities in which we compete and there is no requirement that any additional business opportunities be presented to us.

The interests of Mr. Icahn, including his interests in entities in which he and we have invested or may invest in the future, may differ from your interests as a holder of our securities and, as such, he may take actions that may not be in your interest. For example, if we encounter financial difficulties or are unable to pay our debts as they mature, Mr. Icahn's interests might conflict with your interests as a holder of our securities.

In addition, if Mr. Icahn were to sell, or otherwise transfer, some or all of his interests in us to an unrelated party or group, a change of control could be deemed to have occurred under the terms of the indentures governing our outstanding notes which would require us to offer to repurchase all outstanding notes at 101% of their principal amount plus accrued and unpaid interest and liquidated damages, if any, to the date of repurchase. However, it is possible that we will not have sufficient funds at the time of the change of control to make the required repurchase of notes.

***Since we are a limited partnership, you may not be able to pursue legal claims against us in U.S. federal courts.***

We are a limited partnership organized under the laws of the state of Delaware. Under the rules of federal civil procedure, you may not be able to sue us in federal court on claims other than those based solely on federal law, because of lack of complete diversity. Case law applying diversity jurisdiction deems us to have the citizenship of each of our limited partners. Because we are a publicly traded limited partnership, it may not be possible for you to sue us in a federal court because we have citizenship in all 50 U.S. states and operations in many states. Accordingly, you may be limited to bringing any claims in state court. Furthermore, AREP Finance, which has been corporate co-issuer for our debt securities, has only nominal assets and no operations. While you may be able to sue AREP Finance in federal court, you are not likely to be able to realize on any judgment rendered against it.

***As a holder of our securities you may be required to comply with licensing, qualification or other requirements under gaming laws and could be required to dispose of the securities.***

Currently, we indirectly own the equity of subsidiaries that hold the licenses for three hotels and casinos in Nevada. We indirectly own Stratosphere Corporation, which owns Stratosphere Gaming Corp. Stratosphere Gaming holds the gaming license for the Stratosphere Hotel and Casino. We also indirectly own the equity of subsidiaries that hold the licenses for the two Arizona Charlie's hotels and casinos. We also indirectly own approximately 41.9% of the outstanding common stock of Atlantic Holdings which indirectly owns The Sands Hotel and Casino, and, after giving effect to the acquisition of additional shares that we have agreed to acquire, we will indirectly own approximately 58.3% of such common stock.

We may be required to disclose the identities of the holders of our securities to the New Jersey and Nevada gaming authorities upon request. The New Jersey Casino Control Act, or NJCCA, imposes substantial restrictions on the ownership of our securities and our subsidiaries. A holder (whether the record or beneficial owner) of our securities may be required to meet the qualification provisions of the NJCCA relating to financial sources and/or security holders. If a holder does not so qualify, then the holder must dispose of his interest in our securities within 30 days after receipt by us of notice of the finding that the holder does not so qualify, or we may redeem the securities at the lower of the outstanding principal amount, in the case of debt securities, or the securities' value calculated as if the investment had been made on the date of disqualification of the holder (or such lesser amount as may be

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required by the New Jersey Commission). If a holder is found unqualified by the New Jersey Commission, it is unlawful for the holder:

- to exercise, directly or through any trustee or nominee, any right conferred by such securities or
- to receive any dividends or interest upon such securities or any remuneration, in any form, from its affiliated casino licensee for services rendered or otherwise.

The Nevada Gaming Commission may, in its discretion, require a holder of our securities to file an application, be investigated and be found suitable to hold the securities. In addition, the Nevada Gaming Commission may, in its discretion, require the holder of any debt security of a company registered by the Nevada Gaming Commission as a publicly-traded corporation to file an application, be investigated and be found suitable to own such debt security.

If a record or beneficial holder of any of our securities is required by the Nevada Gaming Commission to be found suitable, such owner will be required to apply for a finding of suitability within 30 days after request of such gaming authority or within such earlier time prescribed by such gaming authority. The applicant for a finding of suitability must pay all costs of the application and investigation for such finding of suitability. If the Nevada Gaming Commission determines that a person is unsuitable to own such security, then, pursuant to the Nevada Gaming Control Act, we can be sanctioned, including the loss of our approvals, if, without the prior approval of the Nevada Gaming Commission, we:

- pay to the unsuitable person any dividend, interest, or any distribution whatsoever;
- recognize any voting right of the unsuitable person with respect to such securities;
- pay the unsuitable person remuneration in any form; or
- make any payment to the unsuitable person by way of principal, redemption, conversion, exchange, liquidation or similar transaction.

Each holder of our securities will be deemed to have agreed, to the extent permitted by law, that if the Nevada gaming authorities determine that a holder or beneficial owner of the securities must be found suitable, and if that holder or beneficial owner either refuses to file an application or is found unsuitable, that holder shall, upon our request, dispose of its securities within 30 days after receipt of our request, or earlier as may be ordered by the Nevada gaming authorities. We will also have the right to call for the redemption of our securities of any holder at any time to prevent the loss or material impairment of a gaming license or an application for a gaming license at a redemption price equal to:

- the lesser of the cost paid by the holder or the fair market value of the securities, in each case, plus accrued and unpaid interest and liquidated damages, if any, to the earlier of the date of redemption, or earlier as may be required by the Nevada gaming authorities or the finding of unsuitability by the Nevada gaming authorities; or
- such other lesser amount as may be ordered by the Nevada gaming authorities.

We will not be responsible for any costs or expenses you may incur in connection with your application for a license, qualification or a finding of suitability, or your compliance with any other requirement of a gaming authority. As soon as a gaming authority requires you to sell your securities, you will, to the extent required by applicable gaming laws, have no further right:

- to exercise, directly or indirectly, any right conferred by the securities, any indenture governing them or our partnership agreement; or
- to receive from us any interest, dividends or any other distributions or payments, or any remuneration in any form, relating to the notes, except the redemption price we refer to above.

## Risks Relating to Our Equity Securities

### ***We have not made cash distributions in recent years and future distributions, if any, can be affected by numerous factors.***

The partnership has not made cash distributions in recent years. The board of directors of the general partner has commenced a review of the partnership's distribution policy, and it is uncertain when the board will conclude its review or whether the board will authorize distributions. The partnership's ability to pay distributions will depend on numerous factors, including the availability of adequate cash flow from operations; the proceeds, if any, from divestitures; the partnership's capital requirements and other obligations; restrictions contained in our debt instruments and our issuances of additional equity and debt securities. The availability of cash flow in the future depends as well upon events and circumstances outside the partnership's control, including prevailing economic and industry conditions and financial, business and similar factors. No assurance can be given that AREP will be able to make distributions or as to the timing of any distribution. If distributions are made, there can be no assurance that holders of depositary units may not be required to recognize taxable income in excess of cash distributions made in respect of the period in which a distribution is made.

### ***Our indebtedness may limit our ability to make distributions and may adversely affect our operations.***

Our debt outstanding as of March 31, 2005, totaled \$1.1 billion on a historical and supplemental basis. Our ability to make principal and interest payments on that debt depends on future performance, which performance is subject to many factors, some of which will be outside of our control. We will be required to offer to purchase our outstanding senior notes at 101% of the principal amount thereof, plus accrued and unpaid interest, upon a change of control as defined in the applicable indenture. Payment of principal and interest on our indebtedness, as well as compliance with the requirements and covenants of such indebtedness, reduces the amount of cash available for distributions to unitholders.

### ***Holders of depositary units may experience dilution of their interests.***

Subject to the requirements of the New York Stock Exchange, we may issue an unlimited number of additional depositary units and other equity securities, including equity securities senior to our depositary units, existing cumulative pay-in-kind units or other preferred units that we may issue from time to time, for such consideration and on such terms and conditions as shall be established by our general partner, in its sole discretion, without the approval of any unitholders. When we issue additional equity securities, your proportionate partnership interest will decrease and the amount of cash, if any, distributed on each unit and the market price of the common units could decrease. Issuance of additional depositary units will also diminish the relative limited voting power of each previously outstanding unit.

### ***Holders of units have limited voting rights, rights to participate in our management and control of us.***

Our general partner manages and operates AREP. Unlike the holders of common stock in a corporation, holders of outstanding units have only limited voting rights on matters affecting our business. Holders of depositary units have no right to elect the general partner on an annual or other continuing basis, and our general partner generally may not be removed except pursuant to the vote of the holders of not less than 75% of the outstanding depositary units. In addition, removal of the general partner may result in a default under our debt securities. As a result, holders of depositary units have limited say in matters affecting our operations and others may find it difficult to attempt to gain control or influence our activities.

### ***Holders of depositary units may not have limited liability in certain circumstances and may be liable for the return of distributions that cause our liabilities to exceed our assets.***

We conduct our businesses through AREH in several states. Maintenance of limited liability will require compliance with legal requirements of those states. We are the sole limited partner of AREH. Limitations on the liability of a limited partner for the obligations of a limited partnership have not clearly

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been established in several states. If it were determined that AREH has been conducting business in any state without compliance with the applicable limited partnership statute or the possession or exercise of the right by the partnership, as limited partner of AREH, to remove its general partner, to approve certain amendments to the AREH partnership agreement or to take other action pursuant to the AREH partnership agreement, constituted "control" of AREH's business for the purposes of the statutes of any relevant state, AREP and/or unitholders, under certain circumstances, might be held personally liable for AREH's obligations to the same extent as our general partner. Further, under the laws of certain states, AREP might be liable for the amount of distributions made to AREP by AREH.

Holders of depositary units may also have to repay AREP amounts wrongfully distributed to them. Under Delaware law, we may not make a distribution to holders of common units if the distribution causes our liabilities to exceed the fair value of our assets. Liabilities to partners on account of their partnership interests and nonrecourse liabilities are not counted for purposes of determining whether a distribution is permitted. Delaware law provides that a limited partner who receives such a distribution and knew at the time of the distribution that the distribution violated Delaware law will be liable to the limited partnership for the distribution amount for three years from the distribution date.

Additionally, under Delaware law an assignee who becomes a substituted limited partner of a limited partnership is liable for the obligations, if any, of the assignor to make contributions to the partnership. However, such an assignee is not obligated for liabilities unknown to him or her at the time he or she became a limited partner if the liabilities could not be determined from the partnership agreement.

### ***The market for our securities may be volatile.***

The market for our equity securities may be subject to disruptions that could cause substantial volatility in their prices. Any such disruptions may adversely affect the value of your securities.

## **Risks Relating to Our Structure**

### ***We are a holding company and will depend on the businesses of our subsidiaries to satisfy our obligations.***

We are a holding company. Our assets consist primarily of investments in our subsidiaries. Our liquid assets, including cash and cash equivalents, U.S. government and agency obligations and marketable equity and debt securities, are held primarily by AREH and its subsidiaries. Moreover, if we make significant investments in operating businesses, it is likely that we will reduce the liquid assets at AREP and AREH in order to fund those investments and ongoing operations. Consequently, our cash flow and our ability to meet our debt service obligations and make distributions with respect to depositary units and preferred units likely will depend on the cash flow of our subsidiaries and the payment of funds to us by our subsidiaries in the form of loans, dividends, distributions or otherwise.

The operating results of our subsidiaries may not be sufficient to make distributions to us. In addition, our subsidiaries are not obligated to make funds available to us, and distributions and intercompany transfers from our subsidiaries to us may be restricted by applicable law or covenants contained in debt agreements and other agreements to which these subsidiaries may be subject or enter into in the future. The terms of any borrowings of our subsidiaries or other entities in which we own equity may restrict dividends, distributions or loans to us. For example, the notes issued by our indirect wholly-owned subsidiary, American Casino & Entertainment Properties LLC, or ACEP contain restrictions on dividends and distributions and loans to us, as well as other transactions with us. ACEP also has a credit agreement which contains financial covenants that have the effect of restricting dividends or distributions. These likely will preclude our receiving payments from the operations of our gaming and certain of our oil and gas properties. The operating subsidiary of NEG Holding LLC, of which we have agreed to acquire a membership interest, has a credit agreement which contains financial covenants that have the effect of restricting dividends or distributions. To the degree any distributions and transfers are impaired or prohibited, our ability to make payments on the securities will be limited.

***We or our subsidiaries may be able to incur substantially more debt.***

We or our subsidiaries may be able to incur substantial additional indebtedness in the future. The terms of our currently outstanding debt do not prohibit us or our subsidiaries from doing so. We may incur additional indebtedness if we comply with certain financial tests contained in the indentures. As of March 31, 2005, based upon these tests, we could have incurred up to approximately \$1.5 billion of additional indebtedness on a historical and supplemental basis. Our subsidiaries other than AREH are not subject to any of the covenants contained in the indentures with respect to our currently outstanding debt, including the covenants restricting debt incurrence. If new debt is added to our and our subsidiaries' current debt levels, the related risks that we, and they now face could intensify.

***Our failure to comply with the covenants contained under any of our debt instruments, including the indentures governing our outstanding notes, including our failure as a result of events beyond our control, could result in an event of default which would materially and adversely affect our financial condition.***

If there were an event of default under one of our debt instruments, the holders of the defaulted debt could cause all amounts outstanding with respect to that debt to be due and payable immediately. In addition, any event of default or declaration of acceleration under one debt instrument could result in an event of default under one or more of our other debt instruments. It is possible that, if the defaulted debt is accelerated, our assets and cash flow may not be sufficient to fully repay borrowings under our outstanding debt instruments and we cannot assure you that we would be able to refinance or restructure the payments on those debt securities.

***To service our indebtedness and pay distributions with respect to our units, we will require a significant amount of cash. Our ability to maintain our current cash position or generate cash depends on many factors beyond our control.***

Our ability to make payments on and to refinance our indebtedness, to pay distributions with respect to our units and to fund operations will depend on existing cash balances and our ability to generate cash in the future. This, to a certain extent, is subject to general economic, financial, competitive, regulatory and other factors that are beyond our control.

In addition, we may not generate sufficient cash flow from operations or investments and future borrowings may not be available to us in an amount sufficient to enable us to service our indebtedness or to fund our other liquidity needs. We may need to refinance all or a portion of our indebtedness on or before maturity. We cannot assure you that we will be able to refinance any of our indebtedness on commercially reasonable terms or at all.

## **Risks Relating to Our Business**

### **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;

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- 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.***

Our existing operations and 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 explosions 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.

### ***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 oil or natural gas, and the costs of operating each wells. While each of NEG Holding, TransTexas and Panaco has successfully drilled wells, there are inherent risks in doing so, and 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 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.

***Government regulations impose costs on abandoning oil and gas facilities.***

Government regulations and lease terms require all oil and gas producers to plug and abandon platforms and production facilities at the end of the properties' lives. The reserve valuations for NEG Holding, TransTexas and Panaco do not include the estimated costs of plugging the wells and abandoning the platforms and equipment on their properties, less any cash deposited in escrow accounts for these obligations. These costs are usually higher on offshore properties, as are most expenditures on offshore properties. As of December 31, 2004, the total estimated abandonment costs, net of \$23.5 million already in escrow, were approximately \$33.1 million. Those future liabilities are accounted for by accruing for them in depreciation, depletion and amortization expense over the lives of each property's total proved reserves.

***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.

**Gaming**

***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. 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. We currently own 41.9% and GB Holdings owns 41.7% of the outstanding common stock of 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 properties could have a negative impact on our profitability.

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The operating expenses associated with our gaming 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 gaming industry.***

The gaming 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

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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 gaming 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.

### **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 March 31, 2005, we owned 67 rental real estate properties with a book value of approximately \$164.8 million, individually encumbered by mortgage debt which aggregated approximately \$80.2 million. As of March 31, 2005, we had entered into conditional sales contracts or letters of intent for 11 rental real estate properties. Selling prices for the properties covered by the contracts or letters of intent would total approximately \$45.5 million. These properties are encumbered by mortgage debt of approximately \$25.3 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 and it may be difficult to sell those properties that existing tenants decline to re-let. Our attempt to market the real estate portfolio may not be successful. Even if our efforts are successful, we cannot be certain that the proceeds from the sales can be used to acquire businesses and investments at prices or at projected returns which are deemed favorable.

***We face potential adverse effects from tenant bankruptcies or insolvencies.***

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

***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.

**Investments**

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

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

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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;
- fluctuation of U.S. dollar exchange rates; and
- adverse legal and regulatory developments that may affect particular businesses.

### **USE OF PROCEEDS**

Except as described in any prospectus supplement, the net proceeds from the sale of the securities will be added to our general funds and used for general business purposes, including, among other things, additions to working capital, financing of capital expenditures and acquisitions. We continually identify, evaluate and discuss with others acquisition opportunities. We continually evaluate potential acquisition candidates and intend to continue to pursue transactions. However, we have not reached any agreements, commitments or understandings for any future acquisitions other than those arrangements, if any, as described in documents incorporated by reference or in prospectus supplements.

When we offer a particular series of securities, the prospectus supplement relating to that offering will describe the intended use of the net proceeds received from that offering. We will retain broad discretion in the use of the net proceeds.

### **DESCRIPTION OF DEPOSITARY UNITS**

The following description of our depositary units does not purport to be complete and is qualified in its entirety by reference to applicable Delaware law, and to provisions of our partnership agreement, as amended, and the depositary agreement, as amended, related to the depositary agreement, or the depositary agreement entered into among us, the Registrar and Transfer Company, as depositary, or the depositary, and the unitholders.

#### **General**

The depositary units represent limited partner interests in AREP. The percentage interest in AREP represented by a depositary unit is equal to the ratio it bears at the time of such determination to the total number of depositary units in AREP (including any undeposited depositary units) outstanding, multiplied by 99%, which is the aggregate percentage interest in AREP of all holders of depositary units. Subject to the rights and preferences of preferred units, each depositary unit evidences entitlement to a portion of AREP's distributions and an allocation of AREP's net income and net loss, as determined in accordance with our partnership agreement. We are authorized to issue additional depositary units or other securities from time to time to unitholders or additional investors without the consent or approval of holders of depositary units, or unitholders. There is no limit to the number of depositary units or additional classes of units, including preferred units, that may be issued. The board of directors of our general partner has the power, without any further action by the unitholders, to issue units with such designations, preferences and relative, participating or other special rights, powers and duties, including rights, powers and duties senior to existing classes of depositary units or preferred units. The depositary units have no preemptive rights.

## **Transfer of Depositary Units**

Until a depositary unit has been transferred on the books of the depositary, we and the depositary will treat the record holder of the unit as the absolute owner for all purposes. A transfer of depositary units will not be recognized by the depositary or us unless and until the transferee of the depositary units, or a subsequent transferee, executes and delivers a transfer application to the depositary. Transfer applications appear on the back of each depositary receipt and also will be furnished at no charge by the depositary upon receipt of a request for it. By executing and delivering a transfer application to the depositary, a subsequent transferee automatically requests admission as a substituted unitholder in the partnership, agrees to be bound by the terms and conditions of our partnership agreement and grants a power of attorney to our general partner.

On a monthly basis, the depositary will, on behalf of subsequent transferees who have submitted transfer applications, request the general partner to admit such subsequent transferees as substituted limited partners of AREP. If our general partner consents to such substitution, a subsequent transferee will be admitted to the partnership as a substituted limited partner upon the recordation of such subsequent transferee's name in our books and records. Upon admission, which is in the sole discretion of our general partner, he will be entitled to all of the rights of a limited partner under the Delaware Revised Uniform Limited Partnership Act, or the Delaware Act, and pursuant to our partnership agreement.

A subsequent transferee will, after submitting a transfer application to the depositary but before being admitted to AREP as a substituted unitholder of record, have the rights of an assignee under the Delaware Act and our partnership agreement, including the right to receive its pro rata share of distributions. A subsequent transferee who does not execute and deliver a transfer application to the depositary will not be recognized as the record holder of depositary units and will only have the right to transfer or assign its depositary units to a purchaser or other transferee. Therefore, such subsequent transferee will neither receive distributions from the partnership nor be entitled to vote on partnership matters or any other rights to which record holders of depositary units are entitled under the Delaware Act or pursuant to our partnership agreement. Distributions made in respect of the depositary units held by such subsequent transferees will continue to be paid to the transferor of such depositary units.

A subsequent transferee will be deemed to be a party to the depositary agreement and to be bound by its terms and conditions whether or not such subsequent transferee executes and delivers a transfer application to the depositary. A transferor will have no duty to ensure the execution of a transfer application by a subsequent transferee and will have no liability or responsibility if such subsequent transferee neglects or chooses not to execute and deliver the transfer application to the depositary. Whenever depositary units are transferred, the transfer application requires that a subsequent transferee answer a series of questions. The required information is designed to provide us with the information necessary to prepare our tax information return. If the subsequent transferee does not furnish the required information, we will make certain assumptions concerning this information, which may result in the transferee receiving a lesser amount of consideration.

## **Withdrawal of Depositary Units from Deposit**

A unitholder may withdraw from the depositary the depositary units represented by its depositary receipts upon written request and surrender of the depositary receipts evidencing the depositary units in exchange for a certificate issued by us evidencing the same number of depositary units. A subsequent transferee is required to become a unitholder of record before being entitled to withdraw depositary units from the depositary. Depositary units which have been withdrawn from the depositary, and therefore are not evidenced by depositary receipts, are not transferable except upon death, by operation of law, by transfer to us or redeposit with the depositary. A holder of depositary units withdrawn from deposit will continue to receive its respective share of distributions and allocations of net income and losses pursuant to our partnership agreement. In order to transfer depositary units withdrawn from the depositary other than upon death, by operation of law or to the partnership, a unitholder must redeposit the certificate evidencing such withdrawn depositary units with the depositary and request issuance of depositary receipts

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representing such depositary units, which depositary receipts then may be transferred. Any redeposit of such withdrawn depositary units with the depositary requires 60 days' advance written notice and payment to the depositary of a redeposit fee initially \$5.00 per 100 depositary units or portion thereof, and will be subject to the satisfaction of certain other procedural requirements under the depositary agreement.

### **Replacement of Lost Depositary Receipts and Certificates**

A unitholder or subsequent transferee who loses or has its certificate for depositary units or depositary receipts stolen or destroyed may obtain a replacement certificate or depositary receipt by furnishing an indemnity bond and by satisfying certain other procedural requirements under the depositary agreement.

### **Amendment of Depositary Agreement**

Subject to the restrictions described below, any provision of the depositary agreement, including the form of depositary receipt, may, at any time and from time to time, be amended by the mutual agreement of us and the depositary in any respect deemed necessary or appropriate by them, without the approval of the holders of depositary units. No amendment to the depositary agreement, however, may impair the right of a holder of depositary units to surrender a depositary receipt and to withdraw any or all of the deposited depositary units evidenced by a depositary receipt or to redeposit depositary units pursuant to the depositary agreement and receive a depositary receipt evidencing redeposited depositary units.

The depositary will furnish notice to each record holder of a depositary unit, and to each securities exchange on which depositary units are listed for trading, of any material amendment made to the depositary agreement. Each record holder of a depositary unit at the time any amendment of the depositary agreement becomes effective will be deemed, by continuing to hold the depositary unit, to consent and agree to the amendment and to be bound by the depositary agreement, as so amended.

The depositary will give notice of the imposition of any fee or charge, other than fees and charges provided for in the depositary agreement, or change to the fees and charges, upon record holders of depositary units to any securities exchange on which the depositary units are listed for trading and to all record holders of depositary units. The imposition of any fee or charge, or change to them, will not be effective until the expiration of 30 days after the date of such notice, unless it becomes effective in the form of an amendment to the depositary agreement effected by us and the depositary.

### **Termination of Depositary Agreement**

We may not terminate the depositary agreement unless the termination (1) is in connection with us entering into a similar agreement with a new depositary selected by the general partner, (2) is as a result of our receipt of an opinion of counsel to the effect that the termination is necessary for us to avoid being treated as an "association" taxable as a corporation for federal income tax purposes or to avoid being in violation of any applicable federal or state securities laws or (3) is in connection with our dissolution.

The depositary will terminate the depositary agreement, when directed to do so by us, by mailing notice of termination to the record holders of depositary units then outstanding at least 60 days before the date fixed for the termination in such notice. Termination will be effective on the date fixed in such notice, which date must be at least 60 days after it is mailed. Upon termination of the depositary agreement, the depositary will discontinue the transfer of depositary units, suspend the distribution of reports, notices and disbursements and cease to perform any other acts under the depositary agreement, except in the event the depositary agreement is not being terminated in connection with us entering into a similar agreement with a new depositary, the depositary will assist in the facilitation of the withdrawal of depositary units by holders who desire to surrender their depositary receipts.

### **Resignation or Removal of Depositary**

The depositary may resign as depositary and may be removed by us at any time upon 60 days' written notice. The resignation or removal of the depositary becomes effective upon the appointment of a

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successor depository by us and written acceptance by the successor depository of its appointment. In the event a successor depository is not appointed within 75 days of notification of such resignation or removal, the general partner will act as depository until a successor depository is appointed. Any corporation into or with which the depository may be merged or consolidated will be the successor depository without the execution or filing of any document or any further act.

### **DESCRIPTION OF PREFERRED UNITS**

We are authorized to issue preferred units having rights senior to our depository units and to our currently outstanding cumulative pay-in-kind preferred units. The board of directors of our general partner is authorized to establish the powers, rights, preferences, privileges and designations of one or more class of preferred units without further approval, including:

- distribution rights;
- conversion rights;
- voting rights;
- redemption rights and terms of redemption; and
- liquidation preferences.

The rights, preferences, privileges and restrictions of the preferred units of each class will be fixed by a certificate of amendment to the partnership agreement relating to each class. The prospectus supplement relating to each class will specify the terms of the preferred units, including:

- the maximum number of units in the class and the distinctive designation;
- the rights to share in partnership distributions;
- the terms on which the units may be redeemed, if at all;
- the rights of the class upon dissolution and liquidation of the partnership;
- the terms of any retirement or sinking fund for the purchase or redemption of the units of the class;
- the terms and conditions, if any, on which the units of the class will be convertible into, or exchangeable for, units of any other class or classes of securities;
- the voting rights, if any, on the units of the class; and
- any or all other preferences and relative, participating, operational or other special rights or qualifications, limitations or restrictions of the units.

We will describe the specific terms of a particular class of preferred units in the prospectus supplement relating to that class. The description of preferred units above and the description of the terms of a particular series of preferred units in the prospectus supplement are not complete. You should refer to the applicable certificate of amendment to our partnership agreement for complete information. The prospectus supplement will contain a description of U.S. federal income tax consequences relating to the particular series of preferred units.

### **OUR PARTNERSHIP AGREEMENT AND CERTAIN PROVISIONS OF DELAWARE LAW**

The rights of a limited partner of the partnership are set forth in our partnership agreement. The following is a summary of certain provisions of our partnership agreement and the agreement of limited partnership of AREH, or the AREH partnership agreement, which is similar to our partnership agreement in all material respects (except for the preferred units). The following summary discusses certain provisions which relate to both, and is qualified in its entirety by reference to both our partnership

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agreement and the AREH partnership agreement. A reference to the “partnership agreement” in this prospectus refers to both of our partnership agreement and the AREH partnership agreement, unless otherwise indicated.

### **Removal of the General Partner**

Subject to certain limitations on the exercise by unitholders of voting rights, the general partner may be removed by the written consent or affirmative vote of holders of depositary units owning more than 75% of the total number of all outstanding depositary units, voting as a class, then held by unitholders, including the general partner and its affiliates to the extent that they are holders of depositary units. Upon the removal of the general partner by holders of depositary units, the holders of depositary units will be obligated to elect a successor general partner and to continue the business of the partnership. At the election of the general partner, a successor general partner will be required, at the effective date of its admission as a general partner, to purchase API's 1% general partner interest directly from API for a price equal to its “fair market value,” as described below.

If API does not elect to sell its interest, the successor general partner will be required to contribute to the capital of AREP cash in an amount equal to  $\frac{1}{99}$ th of the product of the number of depositary units outstanding immediately prior to the effective date of such successor general partner's admission (but after giving effect to the conversion of API's general partner interest into depositary units described below) and the average price at which the depositary units had been trading over the 20-day period immediately preceding the successor general partner's admission. Thereafter, the successor general partner will be entitled to one percent (1%) of all partnership allocations and distributions.

If API chooses not to sell its 1% general partner interest directly to a successor general partner, API's general partner interest in AREP will be converted into depositary units, with the number of depositary units to be received to be based upon the “fair market value” of its general partner interest at the time of its removal and the average price at which the depositary units had been trading over the 20-day period preceding the effective date of API's departure. In this regard, the “fair market value” of the departing general partner's interest is the amount that would be distributable to API on account of the interest if AREP were to dispose of all of its assets in an orderly liquidation, commencing on the effective date of its removal at a price equal to the fair market value of those assets (discounted at the rate then payable on one-year U.S. Treasury obligations to the effective date of such removal to reflect the time reasonably anticipated to be necessary to consummate the sales), as agreed upon between API as the departing general partner and its successor, or, in the absence of an agreement, as determined by an independent appraiser.

Upon removal of API from the partnership, API also will be removed as general partner of AREH and its general partner interest in AREH will either be purchased by the successor general partner or converted into depositary units (in which case the successor shall also contribute to the capital of AREH) in the same manner as provided above with respect to the partnership.

The partnership agreement provides that, upon the departure of API and the conversion of its general partner interest in AREP to depositary units, AREP will, at the request of the departing general partner, file with the Securities and Exchange Commission up to three registration statements under the Securities Act registering the offering and sale of all or a portion of the depositary units owned by API, including those depositary units received upon conversion of its general partner interest in AREP and AREH. The cost of the first registrations will be borne by AREP and the cost of any other such registration will be borne by API.

### **Withdrawal of the General Partner**

The general partner may withdraw, but only if:

- (1) the withdrawal is with the consent of a majority interest;

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(2) API, with the consent of a majority interest, transfers all of its interest as general partner in the partnership;

(3) the transferee consents to be bound by the partnership agreement and the transferee has the necessary legal authority to act as successor general partner of the partnership; and

(4) AREP receives an opinion of counsel to the effect that a vote by the unitholders and the admission of a new general partner is in conformity with local law, will not cause the loss of limited liability to the unitholders and will not cause AREP to be treated as an "association" taxable as a corporation for federal income tax purposes.

Notwithstanding the foregoing, API may, without the consent of the unitholders (to the extent permitted by law), transfer its interest as general partner in AREP to any person or entity that has, by merger, consolidation or otherwise, acquired all or substantially all of the assets or stock of API and continued its business, provided that such person or entity has a net worth no less than that of API and has accepted and agreed to be bound by the terms and conditions of the partnership agreement. The general partner also may mortgage, pledge, hypothecate or grant a security interest in its interest as general partner in AREP without the consent of unitholders.

### **Distributions**

The general partner has the power and authority to retain or use partnership assets or revenues as, in the sole and absolute discretion of the general partner, may be required to satisfy the anticipated present and future cash needs of the partnership, whether for operations, expansion, improvements, acquisitions or otherwise.

#### ***Distributions from Operations***

The AREP partnership agreement provides that net cash flow of AREP for each fiscal year or portion of any fiscal year may be distributed quarterly, or at any other time to the extent deemed appropriate by the general partner, in its sole and absolute discretion, to the holders of depositary units and the general partner in accordance with their respective percentage interests in the partnership. The holders of the currently outstanding cumulative pay-in-kind preferred units are not entitled to distributions of net cash flow of the partnership.

#### ***Distributions from Capital Transactions***

Capital transaction proceeds may be distributed or retained by AREP for reinvestment or other partnership purposes in the discretion of the general partner. The amount and timing of distributions of capital transaction proceeds, if any, will be in the sole discretion of the general partner. To the extent that capital transaction proceeds are distributed, the capital transaction proceeds will be distributed by AREP to the holders of depositary units and to the general partner in accordance with their respective percentage interests in the partnership.

Generally, distributions resulting from a liquidation or dissolution of AREP will be made in the same manner as distributions of cash flow and capital transaction proceeds, subject to the overall requirement that distributions be made to partners in accordance with their positive capital account balances and the rights of the holders of preferred units, if any, to their liquidation preference.

### **Allocations of Income and Loss**

The AREP partnership agreement provides, in general, that, after allocation to the holders of preferred units of an amount of income or gain equal to the 5% accrued distribution rate for the year, all items of income, gain, loss and deduction are allocated to API and to the holders of depositary units in accordance with their respective percentage ownership in the partnership. Items allocated to the holders of depositary units are further allocated among them pro rata in accordance with the respective number of depositary units owned by each of them. The partnership's income gain, and loss and deduction, for federal

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income tax purposes, will be computed on an annual basis and apportioned equally among the calendar monthly among the general partner and record holders of depositary units in accordance with their percentage interests as of the close of business on the second to last day of the month in which taxable income or losses are apportioned. The partnership's gains and losses from capital transactions generally will be allocated among the general partner and record holders of depositary units in proportion to their percentage interests as of the close of business on the last day of the month in which such gains and losses occurred. However, if gain from a capital transaction is recognized by the partnership over more than one calendar year, gain recognized by the partnership in years subsequent to the year in which the capital transaction occurred shall be allocated in the same manner as income of the partnership allocated.

### **Amendment of the Partnership Agreement**

Amendments to the partnership agreement may be proposed by the general partner or by holders of depositary units owning at least 10% of the total number of depositary units outstanding then owned by all unitholders. Any proposed amendment (other than those described below) must be approved by the general partner in writing and, subject to limitations on the exercise by unitholders of voting rights, by at least a majority interest in order to be adopted. Unless approved by API in writing and, subject to limitations on the exercise by unitholders of voting rights, by all of the holders of depositary units, no amendment may be made to the partnership agreement if the amendment, in the opinion of counsel would result in the loss of the limited liability of unitholders or AREP as the sole limited partner of AREH or would cause AREP or AREH to be treated as an association taxable as a corporation for federal income tax purposes. In addition, no amendment to the partnership agreement may be made which would:

- enlarge the obligations of the general partner or any unitholder or convert the interest of any unitholder into the interest of a general partner;
- modify the expense reimbursement payable to the general partner and its affiliates pursuant to the partnership agreement or the fees and compensation payable to the general partner and its affiliates pursuant to the AREH partnership agreement;
- modify the order and method for allocations of net income and net loss or distributions of net cash flow from operations without the consent of the general partner or the unitholders adversely affected; or
- amend sections of the partnership agreement concerning amendments of the agreement without the consent of unitholders owning more than 95% of the total number of depositary units outstanding then held by all unitholders.

Notwithstanding the foregoing, the general partner may make amendments to the partnership agreement without the consent of the unitholders, if such amendments are necessary or appropriate:

- to reflect a change in the name or location of the principal office of the partnership;
- to reflect the admission, substitution, termination, or withdrawal of unitholders in accordance with the partnership agreement;
- to qualify AREP as a limited partnership or to ensure that AREP will not be treated as an association taxable as a corporation for federal income tax purposes;
- in connection with or as a result of the general partner's determination that AREP does not or no longer will qualify as a partnership for federal income tax purposes, including, without limitation, an amendment reflecting the reorganization of AREP into a qualified "real estate investment trust";
- to reflect a change that is of an inconsequential nature and does not adversely affect the unitholders in any material respect, or to cure any ambiguity, correct or supplement any provision in the partnership agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under the partnership agreement that will not be inconsistent with law or with the provisions of the partnership agreement;

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- to satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law;
- to facilitate the trading of the depositary units or comply with any requirement or guideline of any securities exchange on which the depositary units are or will be listed for trading;
- to make any change required or contemplated by the partnership agreement;
- to amend any provisions requiring any action by the general partner if applicable provisions of the Delaware Act related to AREP or AREH are amended or changed so that such action is no longer necessary; or
- to authorize AREP to issue units (or other securities) in one or more additional classes, or one or more series of classes, with any designations, preferences and relative, participating, optional or other special rights, powers and duties, including rights, powers and duties senior to existing classes of depositary units or preferred units, as shall be fixed by the general partner.

### **Issuance of Additional Securities**

The partnership is authorized to issue additional depositary units or other securities from time to time to unitholders or additional investors without the consent or approval of unitholders. There is no limit to the number of depositary units or additional classes that may be issued. The board of directors of the general partner has the power, without any further action by the unitholders, to issue securities with such designations, preferences and relative, participating or other special rights, powers and duties, including rights, powers and duties senior to existing classes of depositary units or preferred units.

### **Meetings; Voting Rights of Unitholders**

Any action that is required or permitted to be taken by unitholders may be taken either at a meeting of the holders of depositary units or without a meeting if consents in writing setting forth the action so taken are signed by holders of depositary units owning not less than the minimum number of depositary units or preferred units that would be necessary to authorize or take such action at a meeting. Meetings of the holders of depositary units may be called by the general partner or by unitholders owning at least 10% of the total depositary units outstanding then owned by all such unitholders. Holders of depositary units may vote either in person or by proxy at meetings.

Matters submitted to the unitholders for their consent will be determined by the affirmative vote, in person or by proxy, of a majority interest, except that a higher vote will be required for certain amendments described above, the removal of the general partner and the continuation of AREP after certain events that would otherwise cause dissolution.

Each unitholder will have one vote for each depositary unit as to which the unitholder has been admitted as a unitholder. A subsequent transferee of depositary units who has not been admitted as a unitholder of record with respect to the depositary units will have no voting rights with respect to the depositary units, even if such subsequent transferee holds other depositary units as to which it has been admitted as a unitholder. The voting rights of a unitholder who transfers a depositary unit will terminate with respect to that depositary unit upon its transfer, whether or not the subsequent transferee is admitted as a unitholder of record with respect thereto. The partnership agreement does not provide for annual meetings of the unitholders.

### **Liability of General Partner and Unitholders**

The general partner will be liable for all general obligations of the partnership to the extent not paid by the partnership. The general partner will not, however, be liable for the nonrecourse obligations of the partnership. Assuming that a unitholder does not take part in the control of the business of AREP and otherwise acts in conformity with the provisions of the partnership agreement, the liability of the unitholder will, under the Delaware Act, be limited, subject to certain possible exceptions, generally to the

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amount contributed by the unitholder or the unitholder's predecessor in interest to the capital of the partnership, plus the unitholder's share of any undistributed partnership income, profits or property. However, under the Delaware Act, a unitholder who receives a distribution from AREP that is made in violation of the Delaware Act and who knew at the time of the distribution that the distribution was improper, is liable to AREP for the amount of the distribution. Such liability or liability under other applicable Delaware law (such as the law of fraudulent conveyances) ceases after expiration of three years from the date of the applicable distribution.

Under the Delaware Act, a partnership is prohibited from making a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the partnership, exceed the fair value of the assets of the partnership (except that fair value of property that is subject to a liability for which the recourse of creditors is limited is included in the assets of the partnership only to the extent that the fair value of the property exceeds that liability). An assignee of a limited partner who becomes a substituted limited partner does not, under the Delaware Act, become liable for any obligation of the assignor to restore prior distributions.

### **Books and Reports**

The general partner is required to keep complete and accurate books with respect to the partnership's business at the principal office of the partnership. The books are maintained for financial accounting purposes on the accrual basis, in accordance with generally accepted accounting principles. The fiscal year of AREP is the calendar year.

Unitholders will be entitled to have access to AREP books and certain other records at reasonable times upon reasonable notice to the general partner, subject to certain limitations including those intended to protect confidential business information.

The general partner will furnish to each unitholder, within 120 days after the close of each fiscal year, reports containing certain financial statements of AREP for the fiscal year, including a balance sheet and statements of income, unitholders' equity and changes in financial position, which will be audited by a nationally recognized firm of independent certified public accountants. Within 90 days after the close of each taxable year, AREP will use its best efforts to furnish to each unitholder as of the last day of any month during such taxable year such information as may be required by the unitholders for the preparation of their individual federal, state and local tax returns. This information will be furnished in summary form so that certain complex calculations normally required can be avoided. The partnership's ability to furnish such summary information may depend on the cooperation of unitholders in supplying certain information to the partnership.

### **Power of Attorney**

Pursuant to the AREP partnership agreement, each unitholder of record appoints API and each of API's authorized officers as the unitholder's or substituted unitholder's attorney-in-fact:

- to enter into the depositary agreement and deposit the depositary units of the unitholder or substituted unitholder in the deposit account established by the depositary and admit the holders of depositary units and preferred units as limited partners in AREP, and
- to make, execute, file and/or record:
  - instruments with respect to any amendment of the partnership agreement;
  - conveyances and other instruments and documents with respect to the dissolution, termination and liquidation of AREP pursuant to the terms of the partnership agreement;
  - financing statements or other documents necessary to grant or perfect a security interest, mortgage, pledge or lien on all or any of the assets of the partnership;

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- instruments or papers required to continue the business of AREP pursuant to the partnership agreement;
- instruments relating to the admission of substituted limited partners in the partnership; and
- all other instruments deemed necessary or appropriate to carry out the provisions of the partnership agreement. The power of attorney is irrevocable, will survive the subsequent death, incompetency, dissolution, disability, incapacity, bankruptcy or termination of the granting unitholder, and will extend to such unitholder's heirs, successors and assigns.

### **Death, Bankruptcy or Incompetency of a Unitholder**

The death, bankruptcy or adjudication of incompetency of a unitholder will not dissolve the partnership. In such event, the legal representatives of the unitholder will have all the rights of a unitholder for the purpose of settling or managing the estate and such power as the deceased, bankruptcy or incompetent unitholder possessed to assess, sell or transfer any part of his interest. The transfer of depositary units and preferred units by the legal representative to any person or entity is subject to all of the restrictions to which such transfer would have been subject if it had been made by the deceased, bankrupt or incompetent unitholder.

### **Termination, Dissolution and Liquidation**

The partnership will continue until December 31, 2085, unless sooner dissolved or terminated and its assets liquidated upon the occurrence of the earliest of:

- the withdrawal, removal or bankruptcy of the general partner (subject to the right of the unitholders to reconstitute and continue the business of AREP by written agreement of a majority interest and designation by them of a successor general partner within 90 days);
- the written consent or affirmative vote of a majority interest, with the approval of the general partner, to dissolve and terminate the partnership;
- the sale or other disposition of all or substantially all of the assets of the partnership;
- the partnership's insolvency or bankruptcy; or
- any other event causing or requiring a dissolution under the Delaware Act.

The unitholders' right to continue AREP described above is subject to the receipt of an opinion of counsel to the effect that the continuation and the selection of a successor general partner will not result in the loss of limited liability of the unitholders and will not cause AREP to be treated as an association taxable as a corporation for federal income tax purposes. Upon dissolution, the general partner or other entity or person authorized to wind up the affairs of AREP will proceed to liquidate the assets of AREP and apply the proceeds of liquidation in the order of priority set forth in the partnership agreement.

## **DESCRIPTION OF DEBT SECURITIES**

We will issue our debt securities under one or more separate indentures between us and a trustee that we will name in the applicable supplement to this prospectus. Following the execution of any indenture, the indenture will be filed with the SEC and incorporated by reference in the registration statement of which this prospectus is a part.

The following summary describes certain material terms and provisions of our debt securities. When we offer to sell a particular series of debt securities, we will describe the specific terms of the series in the applicable supplement to this prospectus. You should read the applicable indenture for more details regarding the provisions of particular debt securities.

## General

The debt securities will be our direct obligations which may be either senior debt securities or subordinated debt securities. The debt securities will be issued under one or more indentures. Senior securities and subordinated securities may be issued pursuant to separate indentures, in each case between us and a trustee, which may be the same indenture trustee, subject to such amendments or supplements as may be adopted from time to time. The senior indenture and the subordinated indenture, as amended or supplemented from time to time, are sometimes hereinafter referred to collectively as the "indentures." The indentures will be subject to and governed by the Trust Indenture Act of 1939, as amended. The statements made under this heading relating to the debt securities and the indentures are summaries of their provisions, do not purport to be complete and are qualified in their entirety by reference to the indentures and the debt securities.

## Terms

The indebtedness represented by the senior securities will rank equally with all our other unsecured and unsubordinated indebtedness. The indebtedness represented by subordinated securities will be subordinated in right of payment to the prior payment in full of our senior securities. The particular terms of the debt securities offered by us will be described in one or more supplements to this prospectus, along with any applicable federal income tax considerations unique to such debt securities. Accordingly, for a description of the terms of any series of debt securities, reference must be made to both the prospectus supplement relating to that series and the description of the debt securities set forth in this prospectus.

Except as set forth in any prospectus supplement, our debt securities may be issued without limits as to aggregate principal amount, in one or more series, in each case as established from time to time by us or as set forth in the applicable indenture or in one or more supplemental indentures. All debt securities of one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the holders of the debt securities of that series, for issuance of additional debt securities of that series.

Any indenture trustee under an indenture may resign or be removed with respect to one or more series of debt securities and a successor indenture trustee may be appointed to act with respect to such series. If two or more persons are acting as indenture trustee with respect to different series of debt securities, each indenture trustee shall be an indenture trustee of a trust under the applicable indenture separate and apart from the trust administered by any other indenture trustee, and, except as otherwise indicated herein, any action described in this prospectus to be taken by each indenture trustee may be taken by that indenture trustee with respect to, and only with respect to, the one or more series of debt securities for which it is indenture trustee under the applicable indenture.

The following sets forth certain general terms and provisions of the indenture and the debt securities. The prospectus supplement relating to the series of debt securities being offered will contain further terms of those debt securities, including the following specific terms:

- (1) The title of the debt securities and whether the debt securities are secured, unsecured, senior securities or subordinated securities;
- (2) The aggregate principal amount of the debt securities and any limit on such aggregate principal amount;
- (3) The price (expressed as a percentage of the principal amount of the series) at which the debt securities will be issued and, if other than the principal amount of the debt securities, the portion of the principal amount of the debt securities payable upon declaration of the maturity of the debt securities, or (if applicable) the portion of the principal amount of the debt securities that is convertible into common units or preferred units, or the method by which any such portion shall be determined;

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(4) If convertible, the terms on which such debt securities are convertible, including the initial conversion price or rate and the conversion period and any applicable limitations on the ownership or transferability of the common units or preferred units receivable on conversion;

(5) The date or dates, or the method for determining the date or dates, on which the principal of the debt securities will be payable;

(6) The rate or rates (which may be fixed or variable), or the method by which the rate or rates shall be determined, at which the debt securities will bear interest, if any;

(7) The date or dates, or the method for determining the date or dates, from which any interest will accrue, the dates on which any interest will be payable, the record dates for interest payment dates, or the method by which the record dates shall be determined, the persons to whom interest shall be payable, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(8) The place or places where the principal of (and premium, if any) and interest, if any, on the debt securities will be payable, where the debt securities may be surrendered for conversion or registration of transfer or exchange and where notices or demands to or upon us with respect to the debt securities and the applicable indenture may be served;

(9) The period or periods, if any, within which, the price or prices at which and the other terms and conditions upon which the debt securities may, pursuant to any optional or mandatory redemption provisions, be redeemed, as a whole or in part, at our option;

(10) Our obligation, if any, to redeem, repay or purchase the debt securities pursuant to any sinking fund or analogous provision or at the option of a holder of the debt securities, and the period or periods within which, the price or prices at which and the other terms and conditions upon which the debt securities will be redeemed, repaid or purchased, as a whole or in part, pursuant to such obligation;

(11) If other than U.S. dollars, the currency or currencies in which such debt securities are denominated and payable, which may be a foreign currency or units of two or more foreign currencies or a composite currency or currencies, and the terms and conditions relating thereto;

(12) Whether the amount of payments of principal of (and premium, if any) or interest, if any, on such debt securities may be determined with reference to an index, formula or other method (which index, formula or method may, but need not, be based on a currency, currencies, currency unit or units, or composite currency or currencies) and the manner in which such amounts shall be determined;

(13) Whether the debt securities will be issued in certificated or book-entry form and, if so, the identity of the depositary for such securities;

(14) Whether such debt securities will be in registered or bearer form or both and, if in registered form, the denominations thereof if other than \$1,000 and any integral multiple thereof and, if in bearer form, the denominations thereof and terms and conditions relating thereto;

(15) The applicability, if any, of the defeasance and covenant defeasance provisions described in this prospectus or set forth in the applicable prospectus supplement and indenture, or any modification thereof;

(16) Whether and under what circumstances we will pay any additional amounts on the debt securities in respect of any tax, assessment or governmental charge and, if so, whether we will have the option to redeem the debt securities in lieu of making such payment;

(17) Any deletions from, modifications of or additions to the events of default or our covenants, to the extent different from those described in this prospectus or set forth in the applicable prospectus

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supplement or indenture with respect to the debt securities, and any change in the right of any trustee or any of the holders to declare the principal amount of any debt securities due and payable;

(18) The provisions, if any, relating to the security provided for the debt securities; and

(19) Any other terms of the debt securities not inconsistent with the provisions of the applicable indenture.

If so provided in the applicable prospectus supplement, our debt securities may be issued at a discount below their principal amount and provide for less than their entire principal amount to be payable upon declaration of acceleration of the maturity of the debt securities original issue discount securities. In such cases, any special U.S. federal income tax, accounting and other considerations applicable securities will be described in the applicable prospectus supplement.

Except as may be set forth in any prospectus supplement, neither our debt securities nor the applicable indenture will contain any provisions that would limit our ability to incur indebtedness or that would afford holders of our debt securities protection in the event of a highly leveraged or similar transaction involving us or in the event of a change of control, regardless of whether the indebtedness, transaction or change of control is initiated or supported by us, any of our affiliates or any other party.

Reference is made to the applicable prospectus supplement for information with respect to any deletions from, modifications of, or additions to, the events of default or covenants that are described below, including any addition of a covenant or other provision providing event risk or similar protection.

### **Denomination, Interest, Registration and Transfer**

Unless otherwise described in the applicable prospectus supplement, our debt securities of any series will be issuable in denominations of \$1,000 and integral multiples thereof.

Unless otherwise specified in the applicable prospectus supplement, the principal of (and applicable premium, if any) and interest on any series of debt securities will be payable at the corporate trust office of the applicable indenture trustee, the address of which will be stated in the applicable prospectus supplement; provided, however, that, at our option, payment of interest may be made by check mailed to the address of the person entitled to payment of interest as it appears in the applicable register for the debt securities or by wire transfer of funds to the person at an account maintained within the United States.

Subject to certain limitations imposed upon debt securities issued in book-entry form, our debt securities of any series will be exchangeable for any authorized denomination of other debt securities of the same series and of a like aggregate principal amount and tenor upon surrender of the debt securities at the corporate trust office of the applicable indenture trustee or at the office of any transfer agent designated by us for such purpose. In addition, subject to certain limitations imposed upon debt securities issued in book-entry form, our debt securities of any series may be surrendered for conversion or registration of transfer or exchange thereof at the corporate trust office of the applicable indenture trustee or at the office of any transfer agent designated us the for such purpose. Every debt security surrendered for conversion, registration of transfer or exchange must be duly endorsed or accompanied by a written instrument of transfer, and the person requesting such action must provide evidence of title and identity satisfactory to the applicable indenture trustee or transfer agent. Except as may be set forth in any prospectus supplement, no service charge will be made for any registration of transfer or exchange of any debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with the registration of any transfer or exchange. If the applicable prospectus supplement refers to any transfer agent (in addition to the applicable indenture trustee) initially designated by us with respect to any series of debt securities, we may at any time rescind the designation of any such transfer agent or approve a change in the location through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for such series.

We may at any time designate additional transfer agents with respect to any series of debt securities.

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Neither we nor any indenture trustee shall be required (1) to issue, register the transfer of or exchange debt securities of any series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; (2) to register the transfer of or exchange any debt security, or portion of the debt security, selected for redemption, in whole or in part, except the unredeemed portion of any debt security being redeemed in part; or (3) to issue, register the transfer of or exchange any debt security that has been surrendered for repayment at the option of the holder, except the portion, if any, of such debt security not to be so repaid.

### **Merger, Consolidation or Sale of Assets**

The applicable indenture will provide that we or AREH may, without the consent of the holders of any outstanding debt securities, consolidate with, or sell, lease or convey all or substantially all of our or its assets to, or merge with or into, any other entity provided that (a) either we shall be the continuing entity, or the successor entity (if other than our Company) formed by or resulting from any such consolidation or merger or which shall have received the transfer of such assets, is organized under the laws of any domestic jurisdiction and assumes our obligations to pay principal of (and premium, if any) and interest on all of the debt securities and the due and punctual performance and observance of all of the covenants and conditions contained in each indenture; (b) immediately after giving effect to the transaction and treating any indebtedness that becomes our obligation or any obligation of any of our subsidiaries as a result of the transaction as having been incurred by us or such subsidiary at the time of the transaction, no event of default under the applicable indenture, and no event which, after notice or the lapse of time, or both, would become an event of default, shall have occurred and be continuing; (c) either we or the successor entity shall be permitted to incur at least \$1.00 of indebtedness under the applicable indenture; and (d) an officers' certificate and legal opinion covering these conditions shall be delivered to the applicable indenture trustee.

Unless otherwise provided in the applicable indenture and set forth in the applicable prospectus supplement, the applicable indenture will provide that clauses (a) and (c) will not apply or be required to be complied with in connection with any merger or consolidation or sale, assignment, transfer, conveyance of all or substantially all of our assets to (1) an affiliate, as defined, that has no material assets or liabilities where the primary purpose of the transaction is to change AREP into a corporation or other form of business entity or to change the jurisdiction of formation of AREP, or (2) any person, provided that AREP receives consideration in cash equivalents and marketable securities with an aggregate fair market value of at least \$1.0 billion.

### **Covenants**

Covenants with respect to any series of debt securities will be set forth in the applicable prospectus supplement.

### **Events of Default, Notice and Waiver**

Unless otherwise set forth in the applicable prospectus supplement, each indenture will provide that the following events are "Events of Default" with respect to any series of debt securities:

- (1) default for 30 days in the payment of any installment of interest on any debt security of that series;
- (2) default in the payment of principal of (or premium, if any, on) any debt security of the series at its maturity;
- (3) default in making any sinking fund payment as required for any debt security of such series;
- (4) default in the performance or breach of any other covenant contained in the indenture (other than a covenant added to the Indenture solely for the benefit of a series of debt securities)

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issued under the indenture other than such series), continued for 60 days after written notice as provided in the applicable Indenture has been given;

(5) a default under any bond, debenture, note or other evidence of indebtedness for money borrowed by our company or any guarantor in an aggregate principal amount in excess of \$10.0 million or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidencing any indebtedness for money borrowed by our company or any guarantor in an aggregate principal amount in excess of \$10.0 million, whether such indebtedness exists on the date of the indenture or shall thereafter be created, with the obligations being accelerated and not rescinded or annulled;

(6) our failure by the company or of any guarantor to pay final judgments aggregating in excess of \$10.0 million, which final judgments remain unpaid, undischarged or unstayed for a period of more than 60 days;

(7) certain events of bankruptcy, insolvency or reorganization, or court appointment of a receiver, liquidator or trustee of our company or any guarantor that is a significant subsidiary, as defined; and

(8) any other event of default provided with respect to a particular series of debt securities.

If an event of default under any indenture with respect to debt securities of any series at the time outstanding occurs and is continuing, then in every such case the applicable indenture trustee or the holders of not less than 25% in principal amount of the debt securities of that series will have the right to declare the principal amount (or, if the debt securities of that series are original issue discount securities or indexed securities, such portion of the principal amount as may be specified in the terms of those debt securities) of all the debt securities of that series to be due and payable immediately by written notice thereof to us (and to the applicable indenture trustee if given by the holders). However, at any time after such a declaration of acceleration with respect to debt securities of any series (or of all debt securities then outstanding under any indenture, as the case may be) has been made, but before a judgment or decree for payment of the money due has been obtained by the applicable indenture trustee, the holders of not less than a majority in principal amount of outstanding debt securities of that series (or of all debt securities then outstanding under the applicable indenture, as the case may be) may rescind and annul the declaration and its consequences. The indentures also will provide that the holders of not less than a majority in principal amount of the outstanding debt securities of any series (or of all debt securities then outstanding under the applicable indenture, as the case may be) may waive any past default with respect to that series and its consequences, except a default (x) in the payment of the principal of (or premium, if any) or interest on any debt security of that series or (y) in respect of a covenant or provision contained in the applicable indenture that cannot be modified or amended without the consent of the holder of each outstanding debt security affected by the default.

The indentures will require each indenture trustee to give notice to the holders of debt securities within 90 days of a default under the applicable indenture unless the default shall have been cured or waived; provided, however, that the indenture trustee may withhold notice to the holders of any series of debt securities of any default with respect to the series (except a default in the payment of the principal of (or premium, if any) or interest on any debt security of the series or in the payment of any sinking fund installment in respect to any debt security of the series) if specified responsible officers of such indenture trustee consider withholding of notice to be in the interest of the holders.

Except as may be set forth in any prospectus supplement, each indenture will provide that no holder of debt securities of any series may institute any proceeding, judicial or otherwise, with respect to such indenture or for any remedy under it, except in the case of failure of the applicable indenture trustee, for 60 days, to act after it has received a written request to institute proceedings in respect of an event of default from the holders of not less than 25% in principal amount of the outstanding debt securities of that series, as well as an offer of indemnity reasonably satisfactory to it. This provision will not prevent,

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however, any holder of debt securities from instituting suit for the enforcement of payment of the principal of (and premium, if any) and interest on the debt securities at the respective due dates thereof.

The indentures will provide that, subject to provisions in each indenture relating to its duties in case of default, an indenture trustee will be under no obligation to exercise any of its rights or powers under an indenture at the request or direction of any holders of any series of debt securities then outstanding under that indenture, unless the holders shall have offered to the indenture trustee under that indenture reasonable security or indemnity. The holders of not less than a majority in principal amount of the outstanding debt securities of any series (or of all debt securities then outstanding under an indenture, as the case may be) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the applicable indenture trustee, or of exercising any trust or power conferred upon the indenture trustee. However, an indenture trustee may refuse to follow any direction which is in conflict with any law or the applicable indenture, which may involve the indenture trustee in personal liability or which may be unduly prejudicial to the holders of debt securities of such series not joining therein.

Within 90 days after the close of each fiscal year, we will be required to deliver to each indenture trustee a certificate, signed by one of several of our specified officers, stating whether or not the officer has knowledge of any default under the applicable indenture and, if so, specifying each default and the nature and status of the default.

### **Modification of the Indentures**

Except as may be set forth in any prospectus supplement, modifications and amendments of an indenture will be permitted to be made only with the consent of the holders of not less than a majority in principal amount of all outstanding debt securities issued under the indenture affected by the modification or amendment; provided, however, that no modification or amendment may, without the consent of the holder of each debt security affected thereby,

- (1) change the stated maturity of the principal of, or any installment of interest (or premium, if any) on, any the debt security;
- (2) reduce the principal amount of, or the rate or amount of interest on, or any premium payable on redemption of, any such debt security, or reduce the amount of principal of an original issue discount security that would be due and payable upon declaration of acceleration of its maturity or would be provable in bankruptcy, or adversely affect any right of repayment of the holder of any such debt security;
- (3) change the coin or currency for payment of principal of, premium, if any, or interest on any the debt security;
- (4) release AREH or any other guarantor from any of its obligations, except in accordance with the terms of the applicable indenture;
- (5) reduce the above-stated percentage of outstanding debt securities of any series necessary to modify or amend the applicable indenture, to waive compliance with certain provisions thereof or certain defaults and consequences under the indenture or to reduce the quorum or voting requirements set forth in the applicable indenture; or
- (6) modify any of the foregoing provisions or any of the provisions relating to the waiver of certain past defaults or certain covenants, except to increase the required percentage to effect such action or to provide that certain other provisions may not be modified or waived without the consent of the holder of the debt security.

The holders of a majority in aggregate principal amount of the outstanding debt securities of each series may, on behalf of all holders of debt securities of that series, waive, insofar as that series is concerned, compliance by us with certain restrictive covenants of the applicable indenture.

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Modifications and amendments of an indenture will be permitted to be made by us and the respective indenture trustee without the consent of any holder of debt securities for any of the following purposes:

- (1) to evidence the succession of another person to our company as obligor under the indenture;
- (2) to add to the covenants of our company for the benefit of the holders of all or any series of debt securities or to surrender any right or power conferred upon us in such indenture;
- (3) to add events of default for the benefit of the holders of all or any series of debt securities;
- (4) to add or change any provisions of an indenture to facilitate the issuance of, or to liberalize certain terms of, debt securities in bearer form, or to permit or facilitate the issuance of debt securities in uncertificated form; provided that the action shall not adversely affect the interest of the holders of the debt securities of any series in any material respect;
- (5) to change or eliminate any provisions of an indenture; provided that any such change or elimination shall be effective only when there are no debt securities outstanding of any series created prior thereto which are entitled to the benefit of such provision;
- (6) to secure the debt securities;
- (7) to establish the form or terms of debt securities of any series, including the provisions and procedures, if applicable, for the conversion of such debt securities into common units or preferred units;
- (8) to provide for the acceptance of appointment by a successor indenture trustee or facilitate the administration of the trusts under an indenture by more than one indenture trustee;
- (9) to cure any ambiguity, defect or inconsistency in an indenture; provided that the action shall not adversely affect the interests of holders of debt securities of any series issued under such indenture; or
- (10) to supplement any of the provisions of an indenture to the extent necessary to permit or facilitate defeasance and discharge of any series of such debt securities; provided that such action shall not adversely affect the interests of the holders of the outstanding debt securities of any series.

The indentures will provide that, in determining whether the holders of the requisite principal amount of outstanding debt securities of a series have given any request, demand, authorization, direction, notice, consent or waiver thereunder or whether a quorum is present at a meeting of holders of debt securities,

- (1) the principal amount of an original issue discount security that shall be deemed to be outstanding shall be the amount of principal that would be due and payable as of the date of the determination upon declaration of acceleration of the maturity of the original discount issue security pursuant to the indenture,
- (2) the principal amount of any debt security denominated in a foreign currency that shall be deemed outstanding shall be the U.S. dollar equivalent, determined on the issue date for the debt security, of the principal amount (or, in the case of an original issue discount security, the U.S. dollar equivalent on the issue date of the debt securities of the amount determined as provided in (1) above),
- (3) the principal amount of an indexed security that shall be deemed outstanding shall be the principal face amount of such indexed security at original issuance, unless otherwise provided with respect to such indexed security pursuant to such indenture, and
- (4) debt securities owned by us or any other obligor upon the debt securities or an affiliate of ours or of such other obligor shall be disregarded.

Unless otherwise set forth in the applicable prospectus supplement, we will be permitted, at our option, to discharge certain obligations to holders of any series of debt securities issued under any indenture that have not already been delivered to the applicable indenture trustee for cancellation and that

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either have become due and payable or will become due and payable within one year (or scheduled for redemption within one year) by irrevocably depositing with the applicable indenture trustee, in trust, funds in the currency or currencies, currency unit or units or composite currency or currencies in which the debt securities are payable in an amount sufficient to pay the entire indebtedness on the debt securities with respect to principal (and premium, if any) and interest to the date of the deposit (if such debt securities have become due and payable) or to the stated maturity or redemption date, as the case may be.

The indentures will provide that, unless otherwise indicated in the applicable prospectus supplement, we may elect either

(1) to defease and be discharged from any and all obligations (except for the obligation to pay additional amounts, if any, upon the occurrence of certain events of tax assessment or governmental charge with respect to payments on the debt securities and the obligations to register the transfer or exchange of the debt securities, to replace temporary or mutilated, destroyed, lost or stolen debt securities, to maintain an office or agency in respect of such debt securities, to hold moneys for payment in trust and, with respect to subordinated debt securities which are convertible or exchangeable, the right to convert or exchange) with respect to such debt securities or

(2) to be released from its obligations with respect to debt securities under the applicable indenture shall not constitute an event of default with respect to such debt securities, in either case upon the irrevocable deposit by us with the applicable indenture trustee, in trust, of an amount in the currency or currencies, currency unit or units or composite currency or currencies in which such debt securities are payable at stated maturity, or government securities, as defined, or both, applicable to the debt securities, which through the scheduled payment of principal and interest in accordance with their terms will provide money in an amount sufficient to pay the principal of (and premium, if any) and interest on the debt securities, and any mandatory sinking fund or analogous payments thereon, on their scheduled due dates.

Such a trust will only be permitted to be established if, among other things, we have delivered to the applicable indenture trustee an opinion of counsel (as specified in the applicable indenture) to the effect that the trust funds will not be subject to the effect of any applicable bankruptcy, insolvency, reorganization or similar laws affecting creditors rights generally and to the effect that the holders of the outstanding debt securities will not recognize income, gain or loss for federal income tax purposes as a result of such defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred. In the event of defeasance, the holders of debt securities would thereafter be able to look only to the trust fund for payment of principal (and premium, if any) and interest.

If we effect covenant defeasance with respect to any debt securities and the debt securities are declared due and payable because of the occurrence of any event of default other than the event of default described in clause (4) under “— Events of Default, Notice and Waiver” with respect to specified sections of an indenture (which sections would no longer be applicable to the debt securities) or described in clause (7) under “— Events of Default, Notice and Waiver” with respect to any other covenant as to which there has been covenant defeasance, the amount in the currency, currency unit or composite currency in which the debt securities are payable, and government obligations on deposit with the applicable indenture trustee, will be sufficient to pay amounts due on the debt securities at the time of their stated maturity but may not be sufficient to pay amounts due on such debt securities at the time of the acceleration resulting from such event of default. However, we would remain liable to make payment of such amounts due at the time of acceleration.

The applicable prospectus supplement may further describe the provisions, if any, permitting such defeasance or covenant defeasance, including any modifications to the provisions described above, with respect to the debt securities of or within a particular series.

## **Conversion Rights**

The terms and conditions, if any, upon which the debt securities are convertible into depositary units or preferred units will be set forth in the applicable prospectus supplement relating thereto. Such terms will include whether such debt securities are convertible into depositary units or preferred units, the conversion price (or manner of calculation thereof), the conversion period, provisions as to whether conversion will be at our option or the option of the holders, the events requiring an adjustment of the conversion price and provisions affecting conversion in the event of the redemption of such debt securities and any restrictions on conversion.

## **Payment**

Unless otherwise set forth in the applicable prospectus supplement, the principal of (and applicable premium, if any) and interest on any series of debt securities will be payable at the corporate trust office of the indenture trustee, the address of which will be stated in the applicable prospectus supplement; provided that, at our option payment of interest may be made by check mailed to the address of the person entitled thereto as it appears in the applicable register for such debt securities or by wire transfer of funds to such person at an account maintained within the United States.

All moneys paid by us to a paying agent or an indenture trustee for the payment of the principal of or any premium or interest on any debt security which remain unclaimed at the end of one year after such principal, premium or interest has become due and payable will be repaid to us, and the holder of such debt security thereafter may look only to us for payment thereof.

## **Global Securities**

The debt securities of a series may be issued in whole or in part in the form of one or more global securities that will be deposited with, or on behalf of, a depositary identified in the applicable prospectus supplement relating to such series. Global securities may be issued in either registered or bearer form and in either temporary or permanent form. The specific terms of the depositary arrangement with respect to a series of debt securities will be described in the applicable prospectus supplement relating to such series.

## **DESCRIPTION OF WARRANTS TO PURCHASE DEBT SECURITIES**

The following summarizes the terms of the warrants to purchase debt securities we may offer. The summaries contained in this prospectus, together with the description of warrants to purchase debt securities and indentures included in the applicable prospectus supplement, will provide the material terms of the warrants to purchase debt securities and of the indenture.

## **General**

We may issue debt warrants evidenced by debt warrant certificates independently or together with any securities offered by any prospectus supplement. If we offer debt warrants, the prospectus supplement will describe the terms of the warrants, including:

- the offering price, if any;
- the designation, aggregate principal amount and terms of the debt securities purchasable upon exercise of the warrants and the terms of the applicable indenture under which the debt securities will be issued;
- if applicable, the designation and terms of the debt securities with which the debt warrants are issued and the number of debt warrants issued with each debt security;
- if applicable, the date on and after which the debt warrants and the related securities will be separately transferable;

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- the principal amount of debt securities purchasable upon exercise of one debt warrant and the price at which the principal amount of debt securities may be purchased upon exercise;
- the dates on which the right to exercise the debt warrants begins and expires;
- U.S. federal income tax consequences;
- whether the warrants represented by the debt warrant certificates will be issued in registered or bearer form;
- the currencies in which the offering price and exercise price are payable; and
- if applicable, any antidilution provisions.

You may exchange debt warrant certificates for new debt warrant certificates of different denominations and may present debt warrant certificates for registration of transfer at the corporate trust office of the debt warrant agent, which will be listed in the prospectus supplement. Warrantholders do not have any of the rights of holders of debt securities, except to the extent that the consent of warrantholders may be required for certain modifications of the terms of the applicable indenture or form of the debt security, as the case may be, and the series of debt securities issuable upon exercise of the debt warrants. In addition, warrantholders are not entitled to payments of principal of and interest, if any, on the debt securities.

### **Exercise of Debt Warrants**

You may exercise debt warrants by surrendering the debt warrant certificate at the corporate trust office of the debt warrant agent, with payment in full of the exercise price. Upon the exercise of debt warrants, the debt warrant agent will, as soon as practicable, deliver the debt securities in authorized denominations in accordance with your instructions and at your sole cost and risk. If less than all the debt warrants evidenced by the debt warrant certificate are exercised, the agent will issue a new debt warrant certificate for the remaining amount of debt warrants.

### **DESCRIPTION OF WARRANTS TO PURCHASE DEPOSITARY UNITS OR PREFERRED UNITS**

The following summarizes the terms of depositary unit warrants and preferred unit warrants we may issue. This description is subject to the detailed provisions of a stock warrant agreement that we will enter into between us and a warrant agent we select at the time of issue.

#### **General**

We may issue warrants evidenced by warrant certificates under a warrant agreement independently or together with any securities we offer by any prospectus supplement. If we offer stock warrants, the prospectus supplement will describe the terms of the stock warrants, including:

- the offering price, if any;
- if applicable, the designation and terms of the preferred unit purchasable upon exercise of the preferred unit warrants;
- the number of shares of depositary units or preferred units purchasable upon exercise of one warrant and the initial price at which the units may be purchased upon exercise;
- the dates on which the right to exercise the warrants begins and expires;
- U.S. federal income tax consequences;
- call provisions, if any;

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- the currencies in which the offering price and exercise price are payable; and
- if applicable, the antidilution provisions of the warrants.

The units we issue upon exercise of the stock warrants will, when issued in accordance with the warrant agreement, be validly issued, fully paid and nonassessable.

### **Exercise of Warrants**

You may exercise warrants by surrendering to the warrant agent the warrant certificate, which indicates your election to exercise all or a portion of the warrants evidenced by the certificate. Surrendered warrant certificates must be accompanied by payment of the exercise price in the form of cash or a check. The warrant agent will deliver certificates evidencing duly exercised stock warrants to the transfer agent. Upon receipt of the certificates, the transfer agent will deliver a certificate representing the number of depositary units or preferred units purchased. If you exercise fewer than all the warrants evidenced by any certificate, the warrant agent will deliver a new stock warrant certificate representing the unexercised stock warrants.

### **No Rights as Unitholders**

Holders of warrants are not entitled to vote, to consent, to receive distributions or to receive notice as unitholders with respect to any meeting, or to exercise any rights whatsoever as unitholders of the partnership.

## **PLAN OF DISTRIBUTION**

We may sell our securities in or outside the United States to or through underwriters or dealers, through agents or directly to other purchasers. The applicable supplement to this prospectus with respect to our securities, will set forth the terms of the offering of our securities, including the name or names of any underwriters, dealers or agents, the public offering price, any underwriting discounts and other items constituting underwriter compensation, any discounts or concessions allowed or reallocated or paid to dealers, and any securities exchanges on which the securities may be listed.

Our securities may be sold directly by us or through agents designated by us from time to time at fixed prices, which may be changed, or at varying prices determined at the time of a sale of our securities. Any agent involved in the offer or sale of our securities will be named, and any commissions payable by us to such agent will be set forth, in the supplement to this prospectus relating thereto.

In connection with the sale of our securities, underwriters or agents may receive compensation from us or from purchasers of our securities, for whom they may act as agents, in the form of discounts, concessions or commissions.

Underwriters may sell our securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agents. Underwriters, dealers and agents that participate in the distribution of our securities may be deemed to be underwriters under the Securities Act, and any discounts or commissions they receive from us and any profit on the resale of our securities they realize may be deemed to be underwriting discounts and commissions under the Securities Act. Any such underwriter or agent will be identified, and any such compensation received from us will be described, in the applicable supplement to this prospectus. Unless otherwise set forth in the supplement to this prospectus relating thereto, the obligations of the underwriters or agents to purchase our securities will be subject to conditions precedent and the underwriters will be obligated to purchase all our securities if any are purchased. The public offering price and any discounts or concessions allowed or reallocated or paid to dealers may be changed from time to time.

Any depositary units sold pursuant to this prospectus and applicable prospectus supplement, will be approved for trading, upon notice of issuance, on the New York Stock Exchange.

## LEGAL MATTERS

DLA Piper Rudnick Gray Cary US LLP, New York, New York, will provide us with an opinion as to certain legal matters in connection with the securities we are offering.

## EXPERTS

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

The consolidated financial statements, financial statement schedule and management's assessment of effectiveness of internal control over financial reporting of American Real Estate Partners, L.P. as of December 31, 2004 and for year ended December 31, 2004, incorporated by reference in this prospectus to American Real Estate Partners, L.P.'s Annual Report on Form 10-K, as updated in the Current Report on Form 8-K filed on June 20, 2005, have been audited by Grant Thornton LLP, independent registered public accounting firm, as stated in its reports with respect thereto, and are incorporated by reference herein in reliance upon the authority of said firm as experts in accounting and auditing in giving said reports.

The supplemental consolidated financial statements of American Real Estate Partners, L.P. as of December 31, 2004 and for the year ended December 31, 2004, incorporated by reference in this prospectus to the American Real Estate Partners L.P.'s Current Reports on Form 8-K filed on May 10, 2005 and June 3, 2005, have been audited by Grant Thornton LLP, independent registered public accounting firm, as stated in its reports with respect thereto, and are incorporated by reference herein in reliance upon the authority of said firm as experts in accounting and auditing in giving said reports.

The consolidated financial statements of American Real Estate Partners, L.P. as of December 31, 2003 and for each of the years in to the two-year period ended December 31, 2003 and related financial statement schedule III for the years ended December 31, 2003 and 2002 included in our Annual Report on Form 10-K as of and for the year ended December 31, 2004, as updated by the Current Report on Form 8-K filed on June 20, 2005, have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing.

The consolidated supplemental financial statements of American Real Estate Partners, L.P. as of December 31, 2003 and for each of the years in the two-year period ended December 31, 2003 included in our Current Report on Form 8-K filed on June 3, 2005, have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent registered public accounting firm, incorporated by reference herein, and upon the authority of said firm as experts in accounting and auditing. The audit report covering the supplemental consolidated financial statements state that the supplemental consolidated financial statements give effect to the merger with TransTexas Gas Corporation on April 6, 2005, which has been accounted for in a manner similar to a pooling-of-interests.

### **American Property Investors, Inc.**

The balance sheet of American Property Investors, Inc. as of December 31, 2004, incorporated by reference in this prospectus to American Real Estate Partners, L.P.'s Current Report on Form 8-K filed on June 23, 2005, has been audited by Grant Thornton LLP, independent registered public accounting firm, as stated in its report with respect thereto, and is incorporated by reference herein in reliance upon the authority of said firm as experts in accounting and auditing in giving said report.

## WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-3 under the Securities Act to register the units and debt securities offered by this prospectus. This prospectus is part of the registration

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statement. This prospectus does not contain all the information contained in the registration statement because we have omitted certain parts of the registration statement in accordance with the rules and regulations of the SEC. For further information, we refer you to the registration statement, which you may read and copy at the public reference facilities maintained by the SEC at 100 F Street, N. E. Room 1580, Washington, D.C. 20549. You may obtain copies at the prescribed rates from the Public Reference Section of the SEC at its principal office in Washington, D.C. You may call the SEC at 1-800-SEC-0330 for further information about the public reference rooms. The SEC maintains a web site that contains reports, proxy and information statements and other information regarding us. You may access the SEC's web site at <http://www.sec.gov>.

We are subject to the informational requirements of the Securities Exchange Act of 1934, as amended. As a result, we are required to file reports, proxy statements and other information with the SEC. These materials can be copied and inspected at the locations described above. Copies of these materials can be obtained from the Public Reference Section of the SEC at 100 F Street, N. E. Room 1580, Washington, D.C. 20549, at prescribed rates. Our depositary units are listed on the New York Stock Exchange under the symbol "ACP."

**INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE**

The SEC allows us to "incorporate by reference" the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below, all filings made pursuant to the Securities and Exchange Act of 1934 after the date of the initial registration statement and prior to effectiveness of the registration statement and any other future filings we will make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act:

- Our Annual Report on Form 10-K and 10-K/A for the fiscal year ended December 31, 2004, filed with the SEC on March 16, 2005 and April 14, 2005, respectively (SEC File No. 1-9516);
- Our Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2005, filed with the SEC on May 10, 2005 (SEC File No. 1-9516);
- Our Current Reports on Form 8-K, filed with the SEC on January 5, 2005, January 21, 2005, January 27, 2005, February 2, 2005, February 10, 2005, April 7, 2005, April 29, 2005, May 10, 2005, May 27, 2005, June 3, 2005, June 20, 2005, and June 23, 2005 (SEC File No. 1-9516); and
- The description of the depositary units contained in the Registration Statement on Form 8-A, initially filed on May 12, 1987, and any subsequent amendment thereto filed for the purpose of updating such description.

You may request a copy of these filings (not including the exhibits to such documents unless the exhibits are specifically incorporated by reference in the information contained in this prospectus), at no cost, by writing or telephoning us at the following address:

American Real Estate Partners, L.P.  
100 South Bedford Road  
Mt. Kisco, New York 10549  
Attn: Chief Financial Officer  
Telephone requests may be directed to (914) 242-7700

This prospectus is part of a registration statement we filed with the SEC. You should rely only on the information or representations provided in this prospectus. We have authorized no one to provide you with different information. We are not making an offer of these securities in any state where the offer is not permitted.

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You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of the document.

Statements contained in this prospectus as to the contents of any contract or document are not necessarily complete and in each instance reference is made to the copy of that contract or document filed as an exhibit to the registration statement or as an exhibit to another filing, each such statement being qualified in all respects by such reference and the exhibits and schedules thereto.

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**AMERICAN REAL ESTATE PARTNERS, L.P.  
AMERICAN REAL ESTATE FINANCE CORP.**

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**PROSPECTUS**

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**PART II.**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The estimated expenses in connection with the offering are as follows:

Securities and Exchange Commission registration fee	\$ 117,700
Accounting fees and expenses	*
Legal fees and expenses	*
Miscellaneous	*
<b>TOTAL</b>	<b>\$ *</b>

\* To be completed by amendment.

**Item 15. Indemnification of Directors and Officers.**

**Indemnification Under the Delaware Limited Partnership Act and the American Real Estate Partners L.P. Limited Partnership Agreement**

American Real Estate Partners, L.P. is organized under the laws of Delaware. Section 17-108 of the Delaware Revised Uniform Limited Partnership Act (the "Partnership Act") provides that a limited partnership may, and shall have the power to, indemnify and hold harmless any partners or other persons from and against any and all claims and demands whatsoever, subject to such standards and restrictions set forth in the partnership agreement.

Section 6.15 of the Amended and Restated Agreement of Limited Partnership of American Real Estate Partners, L.P., dated as of May 12, 1987, provides that the general partner, its affiliates, and all officers, directors, employees and agents of the general partner and its affiliates (individually, an "Indemnitee"), to the fullest extent permitted by law, will be indemnified and held harmless from and against any and all losses, claims, demands, costs, damages, liabilities, joint and several, expenses of any nature (including attorneys' fees and disbursements), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which the Indemnitee may be involved, or threatened to be involved, as a party or otherwise by reason of its status as (x) the General Partner or an Affiliate thereof or (y) a partner, shareholder, director, officer, employee or agent of the General Partner or an Affiliate thereof or (z) a Person serving at the request of the Partnership in another entity in a similar capacity, which relate to, arise out of or are incidental to the Partnership, its property, business or affairs, including, without limitation, liabilities under the federal and state securities laws, regardless of whether the Indemnitee continues to be a General Partner, an Affiliate, or an officer, director, employee or agent of the General Partner or of an Affiliate thereof at the time any such liability or expense is paid or incurred, if (i) the Indemnitee acted in good faith and in a manner it believed to be in, or not opposed to, the best interests of the Partnership, and, with respect to any criminal proceeding, had no reasonable cause to believe its conduct was unlawful and (ii) the Indemnitee's conduct did not constitute willful misconduct. The agreement further provides that an Indemnitee shall not be denied indemnification in whole or in part under Section 6.15 by reason of the fact that the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of the partnership agreement. Any indemnification under Section 6.15 shall be satisfied solely out of the assets of the partnership. The Record Holders shall not be subject to personal liability by reason of the indemnification provision.

**Indemnification Under the Delaware General Corporation Law and the Certificate of Incorporation and Bylaws of American Real Estate Finance Corp.**

American Real Estate Finance Corp. ("AREP Finance"), is a corporation incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any threatened, pending or completed actions, suits or proceedings in which such person is made a party by reason of such person being or having been a director, officer, employee of or agent to the Registrants. The statute provides that it is not exclusive of other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of stockholders or disinterested directors or otherwise.

**Item 16. Exhibits**

<u>Exhibit No.</u>	<u>Description</u>
1.1	Form of Underwriting Agreement.†
4.1	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).
4.2	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).
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4.7	Amendment No. 2 to the Amended and Restated Agreement of Limited Partnership of AREH, dated May 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).
4.8	Depository 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).
4.9	Amendment No. 1 to the Depository 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).
4.10	Specimen Depository Receipt (incorporated by reference to Exhibit 4.3 to AREP's Form 10-K for the year ended December 31, 2004 (SEC File No. 1-9516), filed on March 16, 2005).
4.11	Form of Transfer Application (incorporated by reference to Exhibit 4.4 to AREP's Form 10-K for the year ended December 31, 2004 (SEC File No. 1-9516), filed on March 16, 2005).
4.12	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).
4.13	Form of Amendment to Amended and Restated Agreement of Limited Partnership of AREP setting forth the rights and preferences of Preferred Units.†

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<u>Exhibit No.</u>	<u>Description</u>
4.14	Form of Indenture†
5.1	Opinion of DLA Piper Rudnick Gray Cary US LLP†
8.1	Opinion of DLA Piper Rudnick Gray Cary US LLP as to certain federal income tax matters.†
12.1	Ratio of earnings to fixed charges.
23.1	Consent of Grant Thornton LLP
23.2	Consent of KPMG LLP
23.3	Consent of Grant Thornton LLP
23.4	Consent of DLA Piper Rudnick Gray Cary US LLP (included in Exhibit 5.1)†
24	Power of Attorney (included on signature page hereto)

† To be filed by amendment or as an exhibit to a report pursuant to Section 13(a), 13(c) or 15(d) of the Exchange Act.

### **Item 17. Undertakings**

(a) The undersigned registrants hereby undertake:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement;

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the commission pursuant to Rule 424(b) (§230.424(b) of this chapter) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*provided, however*, that paragraphs (1)(i) and (1)(ii) do not apply if the registration statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrants pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrants hereby undertake that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by

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reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) The undersigned registrants hereby undertake to supplement the prospectus, after the expiration of the subscription period, to set forth the results of the subscription offer, the transactions by the underwriters during the subscription period, the amount of unsubscribed securities to be purchased by the underwriters, and the terms of any subsequent reoffering thereof. If any public offering by the underwriters is to be made on terms differing from those set forth on the cover page of the prospectus, a post-effective amendment will be filed to set forth the terms of such offering.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrants have been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrants will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(i)(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of a registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrants pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of the registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(j) The undersigned registrants hereby undertake to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed under the Commission under Section 305(b)(2) of the Act.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing a Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in New York, New York on June 22, 2005.

AMERICAN REAL ESTATE PARTNERS, L.P.

By: American Property Investors, Inc., its general partner

By: /s/ Keith A. Meister

Keith A. Meister  
Chief Executive Officer

KNOW BY ALL MEN BY THESE PRESENTS that each person whose signature appears below hereby constitutes and appoints John P. Saldarelli and Keith A. Meister, and each of them acting singly, as his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, to act, without the other, for him and in his name, place and stead, in any and all capacities, to sign any or all amendments (including pre-effective and post-effective amendments) to this Registration Statement, including any subsequent registration statement for the same offering that may be filed under Rule 462(b) and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their substitute may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated:

<u>/s/ Keith A. Meister</u> Keith A. Meister	Chief Executive Officer (Principal Executive Officer)	June 22, 2005
<u>/s/ John P. Saldarelli</u> John P. Saldarelli	Vice President, Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer)	June 22, 2005
<u>/s/ Jack G. Wasserman</u> Jack G. Wasserman	Director	June 22, 2005
<u>/s/ William A. Leidesdorf</u> William A. Leidesdorf	Director	June 22, 2005
<u>/s/ James L. Nelson</u> James L. Nelson	Director	June 22, 2005
<u>/s/ Carl C. Icahn</u> Carl C. Icahn	Director	June 22, 2005



**EXHIBIT INDEX****Item 16. Exhibits**

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† To be filed by amendment or as an exhibit to a report pursuant to Section 13(a), 13(c) or 15(d) of the Exchange Act.

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

	March 31,	Years Ended December 31,				
	2005 (unaudited)	2004	2003	2002	2001	2000
Income from continuing operations before income taxes, income or loss from equity investees and minority interest	\$ 48,366	\$ 96,129	\$ 60,145	\$ 74,923	\$ 71,169	\$ 77,502
Fixed Charges:						
Interest Expense	\$ 19,161	\$ 46,099	\$ 21,103	\$ 27,297	\$ 36,577	\$ 20,057
Amortized capitalized expenses related to indebtedness	\$ 881	\$ 2,400	\$ 320	\$ 191	\$ 178	\$ 222
Estimated interest within rental expense	\$ 32	\$ 128	\$ 122	\$ 124	\$ 103	\$ 100
Earnings as defined	<u>\$ 68,440</u>	<u>\$144,756</u>	<u>\$ 81,690</u>	<u>\$102,535</u>	<u>\$108,027</u>	<u>\$ 97,881</u>
Fixed Charges (including capitalized items):						
Interest Expense	\$ 19,161	\$ 46,099	\$ 21,103	\$ 27,297	\$ 36,577	\$ 20,057
Amortized capitalized expenses related to indebtedness	\$ 881	\$ 2,400	\$ 320	\$ 191	\$ 178	\$ 222
Estimated interest within rental expense	\$ 32	\$ 128	\$ 122	\$ 124	\$ 103	\$ 100
Fixed charges as defined	<u>\$ 20,074</u>	<u>\$ 48,627</u>	<u>\$ 21,545</u>	<u>\$ 27,612</u>	<u>\$ 36,858</u>	<u>\$ 20,379</u>
Ratio of earnings to fixed charges	<u>3.4</u>	<u>3.0</u>	<u>3.8</u>	<u>3.7</u>	<u>2.9</u>	<u>4.8</u>

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Partners of  
AMERICAN REAL ESTATE PARTNERS, L.P.

We have issued our reports dated March 11, 2005 accompanying the consolidated financial statements of American Real Estate Partners, L.P. and subsidiaries, and accompanying the schedule and management's assessment of the effectiveness of internal control over financial reporting included in the Annual Report on Form 10-K for the year ended December 31, 2004 which are incorporated by reference in this Registration Statement. We have also issued our reports dated May 6, 2005 on the supplemental consolidated financial statements and June 2, 2005 on the consolidated financial statements and schedule, and supplemental consolidated financial statements for the year ended December 31, 2004 of American Real Estate Partners, L.P. and subsidiaries which are also incorporated by reference in this Registration Statement. We consent to the incorporation by reference in the Registration Statement of the aforementioned reports and to the use of our name as it appears under the caption "Experts."

/s/ GRANT THORNTON LLP

New York, New York  
June 22, 2005

Consent of Independent Registered Public Accounting Firm

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

We consent to the use of our report dated September 5, 2004, with respect to the consolidated balance sheet of American Real Estate Partners, L.P. as of December 31, 2003, and the related consolidated statements of earnings, change in partners' equity and comprehensive income, and cash flows for each of the years in the two-year period ended December 31, 2003 and the financial statement schedule III for the years ended December 31, 2003 and 2002 included in American Real Estate Partners L.P.'s Annual Report on Form 10-K for the year ended December 31, 2004 as updated by the Current Report on Form 8-K dated June 20, 2005; and our report dated May 4, 2005, with respect to the supplemental consolidated balance sheet of American Real Estate Partners, L.P. as of December 31, 2003, and the related supplemental consolidated statements of earnings, changes in partners' equity and comprehensive income, and cash flows for each of the two-year period ended December 31, 2003, which give retroactive effect to the merger with TransTexas Gas Corporation on April 6, 2005, which has been accounted for in a manner similar to a pooling of interests, included in American Real Estate Partners L.P.'s Current Report on Form 8-K dated June 3, 2005, incorporated by reference in this registration statement, and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP

New York, New York  
June 20, 2005

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors of  
AMERICAN PROPERTY INVESTORS, INC.

We have issued our report dated April 27, 2005 accompanying the balance sheet of American Property Investors, Inc. as of December 31, 2004, which is incorporated by reference in this Registration Statement. We consent to the incorporation by reference in the Registration Statement of the aforementioned report and to the use of our name as it appears under the caption "Experts."

/s/ GRANT THORNTON LLP

New York, New York  
June 22, 2005